



MARYLAND. Constitutional Convention, 1967-1968.
Proceedings of the Constitutional Convention
of the State. Oct 30 - Nov 6, 1967.

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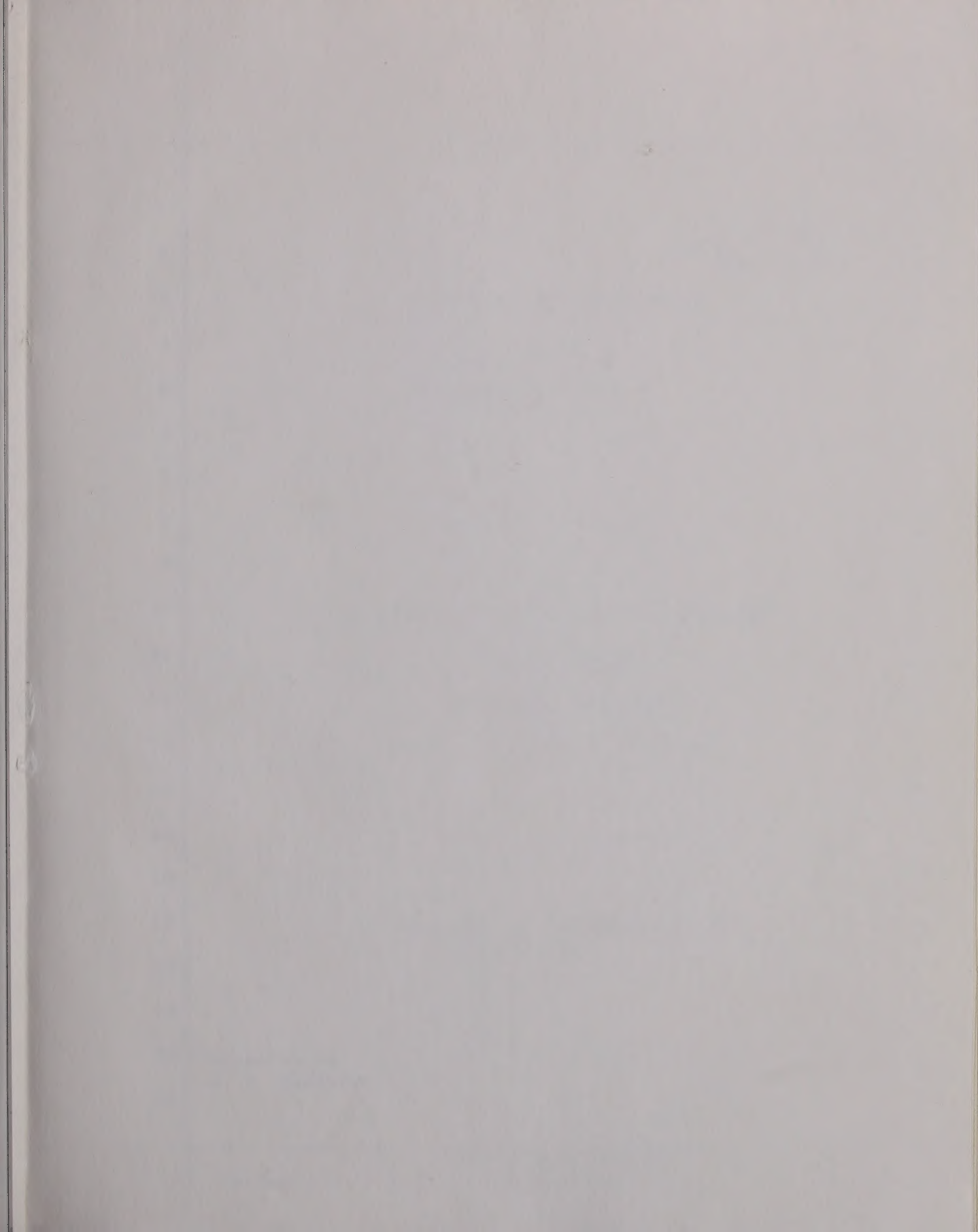
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CONSTITUTIONAL CONVENTION

OF THE

STATE OF MARYLAND

Chamber of the House of Delegates

State Capitol

Annapolis, Maryland

October 30, 1967 - 4:00 p.m.

HONORABLE H. VERNON ENEY,
PRESIDENT

Reported by:
W. P. Banister

1 THE PRESIDENT: The Convention will please
2 come to order.

3 The invocation today will be offered by the
4 Reverend Thomas L. Perry of Emmanuel Lutheran Church,
5 of Baltimore City. Reverend Perry.

6 (The invocation was offered by Reverend Perry.)

7 THE PRESIDENT: Roll call.

8 (Whereupon a roll call was taken.)

9 THE PRESIDENT: Have all delegates answered
10 roll call? The Clerk will record the roll call. There
11 being a quorum present, the Convention is in session.

12 The Chair recognizes Delegate Powers, Chairman
13 of the Committee on Calendar and Agenda.

14 DELEGATE POWERS: Mr. President, I have been
15 informed that the Committee on Rules intends to report
16 on Resolution No. 18 under Item 5 of the calendar.
17 The report will recommend a change in rules, amendment
18 to rules, which is desirable to be considered today.
19 Therefore, I move that the calendar, with that amendment,
20 be adopted and that the rules be suspended so that
21 consideration of that report may be given today.

1 THE PRESIDENT: Is there a second?

2 (The motion was ~~also~~ seconded.)

3 THE PRESIDENT: Ready for the question?

4 The question arises on the adoption of the calendar as
5 amended to include a report of the Committee on Rules
6 with respect to Resolution No. 18 and to suspend the
7 rules to permit consideration of the amendment to the
8 rules to be proposed by that committee. This requires
9 a roll call vote. Will you signify your vote?

10 (Whereupon a roll call vote was taken.)

11 THE PRESIDENT: Have all delegates voted?

12 Does any delegate desire to change his vote? The Clerk
13 will record the vote. There being 139 votes in the
14 affirmative and none in the negative, the motion is
15 carried and the rules are suspended for consideration of
16 the amendment to the rules when we come to that item on
17 the agenda.

18 Next item is reports of other standing
19 committees. We have first the committee report of the
20 Committee on Style, Drafting, and Arrangement, report
21 S&D 1. The report is accepted and referred to all

1 delegates for their information. The report requires
2 no action by the Convention at this time.

3 Next item is consideration of report of the
4 Committee on Rules, Credentials and Convention Budget,
5 report No. R&C 12. The Clerk will read the report.

6 MR. QUILLEN: Committee Report No. R&C 12,
7 Committee Report by the Committee on Rules, Credentials
8 and Convention Budget, Alfred L. Scanlan, Chairman
9 A report regarding proposed amendments in the Standing
10 Rules of the Convention

11 THE PRESIDENT: Committee Report No. R&C 12
12 is referred to the Committee on Calendar and Agenda of
13 the Convention.

14 May I call the attention of all delegates to
15 this report. It is hoped that the amendments suggested
16 in this report and the amendments to be proposed in the
17 oral report of this committee to follow later this
18 afternoon will be the last amendments to be proposed to
19 the rules before they are printed. Will you please,
20 therefore, read carefully this report. It will be placed
21 on the agenda at the earliest possible date for final

1 action by the Convention.

2 Next item on the calendar as amended is the
3 report of the Committee on Rules, Credentials and
4 Convention Budget with respect to Resolution No. 18.
5 The Chair recognizes Delegate Scanlan, Chairman of the
6 committee and requests that he come forward to the
7 rostrum.

8 DELEGATE SCANLAN: Mr. President, fellow
9 delegates, the committee apologizes for not having before
10 you a written report regarding the action it has taken
11 and the recommendations it makes with respect to Resolution
12 No. 18. However, we will have, I hope, on the Clerk's
13 desk the actual proposed amendments to the rules very
14 shortly.

15 Resolution No. 18, as you know, was adopted
16 by the Convention on October 25. On October 26 a motion
17 to reconsider Resolution No. 18 was made and passed the
18 Convention and referred the matter to our committee for
19 consideration and report of its consequences in the light
20 of Convention Rule 28.

21 Convention Rule 28 is the rule which deals

1 with the committee reports. As it now reads, it says the
2 affirmative vote of a majority of the members of a
3 committee shall be necessary to report a proposal out
4 of committee, the report of a minority of at least 20
5 per cent of the members of any committee shall be received,
6 et cetera.

7 The difficulty that would arise should
8 Resolution No. 18 be adopted was pointed out in Motion
9 No. 5, the memorandum accompanying Motion No. 5 -- that
10 was the motion for reconsideration -- especially the
11 last paragraph of that memorandum, by Delegate Marion
12 and Schloeder, pointing out that a minority could
13 block an affirmative majority report if non-voting
14 members of a committee were counted toward a quorum
15 or toward the necessary majority.

16 The committee was unanimous in recommending
17 that if there is any ambiguity about Rule 28, no matter
18 what happens to Resolution No. 18, that Rule 28 be amended
19 in the following two respects. That the words "having
20 the right to vote" be added after the word "committee"
21 in the second line of Rule 28 and that the same words

1 "having the right to vote" be added after the word
2 "committee" occurring in the fourth line of the rule.

3 The amendment proposed would -- pardon me for
4 a second here. We have the language here for the Reading
5 Clerk, I believe.

6 The amendment proposed by the unanimous
7 recommendation of your committee would eliminate any doubt
8 about the fact that if you have nonvoting members of
9 a committee, they do not count toward the requirements
10 in making up the requirements of Rule 28 as to the
11 number necessary to get a majority report out or as to
12 the number necessary to get a minority report out.

13 Turning now to the merits of Resolution No. 18,
14 the sponsors appeared and made their arguments. I think
15 the committee feels there are respectable arguments on
16 both sides of this issue. I think it should be pointed
17 out in all fairness to the President and Vice President
18 the committee chairmen and others, that as early as
19 August 25 the President of the Convention in a memorandum
20 addressed to all of us pointed out that he intended to
21 assign the Vice Presidents and himself to more than one

1 committee and to make them voting members of those
2 committees. Specifically he advised us "in order to
3 provide a means of coordinating effectively the work of
4 the various committees I have assigned the two Vice
5 Presidents to each of four committees and myself to each
6 of three committees. We are designated as liaison members
7 and although as such will be voting members of the
8 committee to which we are assigned, these assignments
9 are primarily made in order to coordinate the work of
10 the committees. I plan to coordinate further the work
11 of all committees,"et cetera.

12 In other words we were on notice. On the
13 other hand, as the sponsors of Resolution No. 18
14 pointed out, this language was not language in the rules
15 although the Rules Committee was very much aware of that
16 language when it met on the eve of the Convention on
17 September 12.

18 So we were on notice. On the other hand,
19 there are strong substantive arguments the other way
20 which indicate whatever justification might have^{been} in the
21 Congress for serving and voting on more than one substantive

1 committee, that the situation is perhaps different in
2 the Convention and the Convention has already at least
3 indicated some feeling on this subject.

4 In our committee there was substantial
5 feeling that the committee should take no action on
6 the merits but a motion to that effect failed three to
7 six and after that vote we voted to recommend favorably
8 the adoption of Resolution No. 18 by an eight to one
9 vote in the committee. Therefore, the committee's
10 recommendations are as follows. That Resolution No. 18
11 be adopted and secondly that Rule 28 be amended in the
12 two respects that I previously mentioned to the
13 Convention.

14 THE PRESIDENT: Delegate Scanlan, I am not
15 clear on the recommendation as to the resolution. The
16 resolution in its original form or as it was amended or
17 in what form?

18 DELEGATE SCANLAN: Forgive me. There were
19 certain amendments to the resolution made in the committee
20 and accepted by the sponsors of the resolution, I believe.
21 First let me call attention that the resolution in its

1 original form will already be amended through Delegate
2 Gallagher's amendment which struck Lines 6 and 7 on Page
3 2 of the original resolution. In other words, it
4 eliminated its retroactive aspects.

5 The committee recommends that Resolution No.
6 18 be adopted as follows. That Lines 1, 2, 3, 4, on
7 Page 1 be retained. That lines 6 through 21 be stricken.
8 Those are the whereas clauses. That in Line 23 the
9 words "regardless of" and then in Line 24 "his official
10 capacity" be stricken.

11 So the whereas clauses would now read,
12 "Resolved that each delegate shall have only one,"
13 words and figures, "substantive committee and be it
14 further resolved that the three delegates presently
15 voting on more than one committee shall continue to be
16 liaison members to other committees but shall not be a
17 voting member except on the one committee to which they
18 are assigned to exercise their vote."

19 The words "and be it further" are stricken.
20 I believe they were stricken under Delegate Gallagher's
21 amendment last week anyway.

1 THE PRESIDENT: Bear with us just a moment.
2 There seems to be some problem with the tape recorder.

3 Thank you for your patience. The Convention
4 will please come to order. Delegate Scanlan, I take it
5 that you propose to make two motions, one dealing with
6 amendment to Resolution No. 18 and the other dealing
7 with an amendment to Rule 28.

8 DELEGATE SCANLAN: That is correct, Mr.
9 President.

10 THE PRESIDENT: Let us take up first then the
11 amendment to Resolution No. 18. As the Chair understands
12 it, the committee proposes to amend Resolution No. 18 by
13 striking all of Lines 6 to 21, inclusive, and the words
14 "regardless of his official capacity" in Lines 23 and
15 24 and the words "and be it" on line 3 at Page 2, all
16 of lines 4, 6, and 7 on Page 2. Is that correct, sir?

17 DELEGATE SCANLAN: In addition, Mr. President,
18 forgive me, I didn't mention this before, that in Line
19 29 the word "substantive" be inserted to precede "committee."
20 Again at Line 25, Page 1, again in Line 1 of Page 2,
21 the word "substantive" be inserted to precede the word

1 "committees" and again on Line 2, Page 2, the word
2 "substantive" to precede the word "committee."

3 THE PRESIDENT: I believe the last changes
4 you mentioned, Delegate Scanlan, were adopted as
5 amendments when the resolution was before the Convention
6 several days ago.

7 DELEGATE SCANLAN: If so, they are superfluous
8 and we withdraw them.

9 THE PRESIDENT: The question arises on the
10 adoption of the amendments to Resolution No. 18 proposed
11 by the Committee on Rules, Credentials and Convention
12 Budget. Is there any discussion? Ready for the
13 question? The question arises on the motion to strike all
14 of Lines 6 to 21, inclusive, and Page 1 of Resolution
15 No. 18, strike the words "regardless of his official
16 capacity" on Lines 23 and 24, on Page 1 of the resolution,
17 to strike the words "and be it" on Line 3 and all of Lines
18 4, 6, and 7 on Page 2 of the resolution. A vote Aye
19 is a vote in favor of the amendments, a vote No is a
20 vote against the amendments. Are you ready for the
21 question? The Parliamentarian calls my attention to the

1 fact that Lines 6 and 7 on Page 2 were also stricken
2 by amendment several days ago so they need not be again
3 stricken. Are you ready for the question? A vote
4 Aye is a vote in favor of the amendment. A vote No is
5 a vote against the amendment. All in favor of the amendment,
6 signify by saying Aye; contrary, No. The Ayes seem to
7 have it. The Ayes have it. It is so ordered.

8 The resolution is now before you in its amended
9 form. Is there any further discussion? The question
10 arises on Resolution No. 18 as amended. Are you ready
11 for the question? A vote Aye is a vote in favor of the
12 resolution as amended, a vote No, a vote against the
13 resolution as amended. All in favor, signify by saying
14 Aye; contrary, No. The Ayes seem to have it. The Ayes
15 have it. The resolution is adopted. The Chair recognizes
16 Delegate Scanlan for the purpose of moving an amendment
17 to Rule 28.

18 DELEGATE SCANLAN: The committee recommends
19 and I move that Rule 28 be amended by adding the phrase
20 "having the right to vote" following the word "committee"
21 in Line 2 of the present rule and again adding a phrase

1 "having the right to vote" as it appears prior to the
2 word "committee" in Line 4 of the present Rule 28.

3 THE PRESIDENT: The question arises on the
4 motion to amend Rule 28 by adding the words "have the
5 right to vote" after the word "committee" in Line 2 and
6 in Line 4. Delegate Chabot.

7 DELEGATE CHABOT: I would like to ask a
8 question of the Chairman. Is it your understanding then
9 that an officer member of a committee may or may not
10 participate in the 20 per cent necessary to secure a
11 minority report?

12 DELEGATE SCANLAN: He may not unless that is
13 the committee on which he will have the one vote.

14 DELEGATE CHABOT: I see. His vote is not
15 to be counted and also his participation is not to be
16 counted.

17 THE PRESIDENT: What do you mean by participation?

18 DELEGATE CHABOT: The requirements for minority
19 reports do not indicate that one must vote in any
20 particular way. Merely this one must be willing to join
21 with others to submit a minority report. The significance

1 of the report is on the floor, not within the committee.

2 DELEGATE SCANLAN: The way I best could answer
3 Delegate Chabot is that assume a committee of 16 members
4 with a liaison officer. That liaison officer now is
5 removed as a result of the amendments to 28 for the
6 purposes of counting. Therefore, when 16 were required
7 you have to have four in order to get a minority report.
8 By eliminating the liaison officer, you reduce the
9 numbers that count for the purpose of computing the number
10 required for minority report to 15, therefore you would
11 only require three in such a case.

12 THE PRESIDENT: I don't believe that is
13 Delegate Chabot's question. As I understand his
14 question, the answer is that the nonvoting member of a
15 committee would not constitute a part of the 20 per cent
16 of members of committee required to file a minority
17 report. Is that your question?

18 DELEGATE CHABOT: My question is whether or
19 not that is so.

20 THE PRESIDENT: The Chair would so rule.
21 Does that answer your question?

1 DELEGATE CHABOT: Yes, sir.

2 THE PRESIDENT: In other words, to use Delegate
3 Scanlan's illustration if in that committee only three
4 members desire to file a minority report, if one of the
5 three constituted a nonvoting member, it would not be
6 sufficient to comply with the rule. Would have to be
7 three voting members. Is there any further discussion?
8 The rules having been suspended, the question arises on
9 the adoption of the amendment to Rule 28 by inserting
10 the words "having the right to vote" after the word
11 "committee" where it appears in Line 2 of Rule 28 and
12 again where it appears in Line 4 of Rule 28. A vote Aye
13 is a vote in favor of the amendment. A vote No is a
14 vote against the amendment. Are you ready for the
15 question? All in favor, signify by saying Aye; contrary,
16 No. The Ayes seem to have it. The Ayes have it. It is
17 so ordered. I am sorry, that requires a roll call vote
18 because of the number required. I have to take a vote
19 again by roll call. A vote Aye is a vote in favor of the
20 amendment. Please signify your vote.

21 (Whereupon a roll call vote was taken.)

1 THE PRESIDENT: Has every delegate voted?
2 Does any delegate desire to change his vote? The Clerk
3 will record the vote. There being 130 votes in the
4 affirmative and two in the negative, the motion is
5 carried and the amendment to Rule 28 is adopted.

6 In view of that action of the Convention, the
7 Chair desires to announce that Delegate Clark is
8 assigned as a voting member to the Committee on the
9 Legislative Branch and Delegate James is assigned as a
10 voting member to the Committee on the Executive Branch.

11 Are there any further reports of standing
12 committees?

13 Next item of business is the introduction and
14 first reading of proposals. I regret to inform you there
15 are twenty-two proposals to be offered today.

16 Delegate Proposal No. 421. The Clerk will
17 read the proposal.

18 MR. QUILLEN: Delegate Proposal No. 421, by
19 Delegates E. J. Clarke, Claggett, Jett, and Hutchinson.
20 A proposal that all persons shall have the right to form,
21 join, or not to join labor organizations for their mutual

1 aid and protection and to bargain collectively through
2 representatives of their own choosing.

3 THE PRESIDENT: Delegate Proposal No. 421 is
4 referred to the Committee on Personal Rights and the
5 Preamble. I have been asked to announce there will be
6 a memorandum in support of this proposal on your desk
7 tomorrow. Delegate Proposal No. 422. The Clerk will
8 read the proposal.

9 MR. QUILLEN: Delegate Proposal No. 422, by
10 Delegate John Carroll Byrnes. A proposal that an
11 article of the Constitution, dealing with Local Government
12 shall include provisions that the General Assembly or
13 the people of Maryland may alter the jurisdiction of either
14 or both Houses of the Legislature to respond to the need
15 for regional services and planning on a statewide level,
16 to read as follows:

17 THE PRESIDENT: Delegate Proposal No. 422 is
18 referred to the Committee on Local Government. There
19 is a memorandum by Delegate Byrnes accompanying Delegate
20 Proposal No. 422.

21 Delegate Proposal No. 423. The Clerk will

1 read the proposal. Delegate Storm.

2 DELEGATE STORM: If it is in order, may I
3 move that so much of the reading of these proposals and
4 referrals be considered the reading of all those proposals
5 and referrals?

6 (The motion was duly seconded.)

7 THE PRESIDENT: My hesitation, Delegate Storm,
8 is due to the fact that there is nothing on the agenda
9 to indicate the proposals and therefore there would be
10 nothing in the journal to indicate which proposals had
11 been submitted.

12 May I suggest that you change your motion to
13 an authorization to the Chair to read the number and
14 reference of the proposals and omit the reading of the
15 titles?

16 DELEGATE STORM: Your suggestion is wonderfully
17 acceptable and I so move.

18 THE PRESIDENT: Is there a second?

19 (The motion was duly seconded.)

20 THE PRESIDENT: Any discussion? All in
21 favor of the motion, signify by saying Aye; contrary, No.

1 The Ayes have it. So ordered. Remaining proposals
2 offered today, copies of all of which are on your desk.
3 Delegate Proposal No. 423, by Delegate Bennett, referred
4 to the Committee on Personal Rights and the Preamble.

5 Delegate Proposal No. 424, by Delegate Bennett,
6 referred to the Committee on Personal Rights and the
7 Preamble.

8 Delegate Proposal No. 425, by Delegate L.
9 Taylor, referred to the Committee on the Legislative
10 Branch.

11 Delegate Proposal No. 426, by Delegate Fornos,
12 referred to the Committee on Local Government. There
13 is a memorandum accompanying Delegate Proposal No. 426
14 by Delegate Fornos.

15 Delegate Proposal No. 427, by Delegate Finch,
16 referred to the Committee on Personal Rights and the
17 Preamble.

18 Delegate Proposal No. 428, by Delegate Finch,
19 referred to the Committee on Personal Rights and the
20 Preamble.

21 Delegate Proposal No. 429, by Delegate Finch,

1 referred to the Committee on Personal Rights and the
2 Preamble.

3 Delegate Proposal No. 430, by Delegate Finch,
4 referred to the Committee on the Executive Branch.

5 Delegate Proposal No. 431, by Delegate Finch,
6 referred to the Committee on Personal Rights and the
7 Preamble.

8 Delegate Proposal No. 432, by Delegate Finch,
9 referred to the Committee on the Executive Branch.

10 Delegate Proposal No. 433, by Delegate Finch,
11 referred to the Committee on the Legislative Branch.

12 Delegate Proposal No. 434, by Delegate Finch,
13 referred to the Committee on Personal Rights and the
14 Preamble.

15 Delegate Proposal No. 435, by Delegates Bard and
16 Mitchell, referred to the Committee on General Provisions.

17 Delegate Proposal No. 436, by Delegate Finch,
18 by request, referred to the Committee on Personal Rights
19 and the Preamble.

20 Delegate Proposal No. 437, by Delegate Finch,
21 referred to the Committee on the Legislative Branch.

1 Delegate Proposal No. 438, by Delegate
2 Grant, referred to the Committee on the Legislative
3 Branch. There is a supplementary memorandum accompanying
4 Delegate Proposal No. 438 by Delegate Grant.

5 Delegate Proposal No. 439, by Delegate L.
6 Taylor referred to the Committee on Personal Rights and
7 the Preamble.

8 Delegate Proposal No. 440, by Delegate L.
9 Taylor, referred to the Committee on the Executive Branch.

10 Delegate Proposal No. 441, by Delegate Grant,
11 referred to the Committee on the Judicial Branch.
12 There is a memorandum by Delegate Grant accompanying
13 Delegate Proposal No. 441. Delegate Proposal No. 442
14 by Delegates White and Hutchinson, referred to the
15 Committee on Personal Rights and the Preamble.

16 Are there any motions or resolutions? The
17 Chair has just two announcements. One, the film "The
18 Mighty Oak" will be shown in this chamber about 15 minutes
19 after the adjournment of this session of the Convention.
20 All delegates who are able to do so are cordially invited
21 to remain for the showing of the film.

1 The other announcement I desire to call to your
2 particular attention, first Committee recommendation to
3 be referred to the Committee of the Whole, Committee
4 Recommendation GP 1, will probably be on the calendar
5 for the Committee of the Whole tomorrow. This will mark
6 the first time that the Convention has resolved itself
7 into a Committee of the Whole to consider specific
8 recommendations for language in the Constitution. The
9 report is short. There will be, I understand, two minority
10 reports, at least one, which are also short. As far as
11 I am advised now, it will not be necessary to have
12 limitations on debate.

13 The procedure for the Committee of the Whole
14 is somewhat different from the procedure for the
15 Convention in a number of particulars. We hope to have
16 available for you very shortly a brief memorandum
17 summarizing these differences so that you will understand
18 clearly what they are. It will not be possible to have
19 this available for you tomorrow. At the beginning of
20 the session of the Committee of the Whole I will state
21 for you the differences. They have essentially to do with

1 the fact that the previous question cannot be moved, the
2 Committee of the Whole, of course, cannot adjourn, can
3 only rise and report back to the Convention. There is
4 no limitation as to the number of times a delegate may
5 speak on the question.

6 Nevertheless and notwithstanding the fact
7 there will be a brief summary of these provisions
8 tomorrow, I earnestly request each delegate to take a few
9 minutes this evening and read over the provisions of the
10 rules with respect to the operation of the Committee of
11 the Whole. It will move much more smoothly if you do.

12 Are there any announcements by committee chair-
13 men? Delegate Kiefer?

14 DELEGATE KIEFER: Mr. President, the Committee
15 on Personal Rights and the Preamble will meet at 5:30 to
16 hear from Delegate Gallagher on Proposal No. 401. I
17 assume, sir, that the movie will be over by that time?

18 THE PRESIDENT: I would think so. Just
19 about, maybe five minutes or so either way.

20 DELEGATE KIEFER: The Committee will continue
21 its deliberations at 7:30 this evening. Tomorrow morning

1 at 9:30 any delegate who has submitted a proposal in the
2 last day or so that wants to be heard can appear before
3 this committee to be heard. I understand this is in
4 accordance with the rules. We want to help you but we
5 have eleven more of them today and have to get on with
6 some kind of substantive order. This does not apply
7 to Delegate Finch who we will hear either tomorrow after-
8 noon after the Convention adjourns or tomorrow night at
9 7:30.

10 It has been previously announced that a public
11 hearing would be held on the preamble for last Friday
12 but because the Convention did not convene, this was
13 postponed. That hearing will be held at 7:30 tomorrow
14 night.

15 THE PRESIDENT: Delegate Sherbow.

16 DELEGATE SHERBOW: Mr. President, the
17 Committee on State Finance and Taxation will meet 15
18 minutes after this session adjourns. I hate to suggest to
19 the members that they forego~~t~~ the opportunity to see the
20 film this time, but I am asking them to do so because the
21 Governor is sending to our committee a series of recommenda-

1 tions which means that our deliberations now will have
2 to continue and many of the items which we thought would
3 already be concluded will have to be reconsidered in the
4 light of those recommendations. So I am asking you please
5 come over to the meeting 15 minutes after this meeting
6 adjourns and we will resume tomorrow morning at 10
7 o'clock.

8 THE PRESIDENT: Delegate Mudd.

9 DELEGATE MUDD:: Mr. President, the Committee
10 on the Judicial Branch will not meet again until tomorrow
11 morning at 10 a.m. We are adopting this procedure to
12 allow our committee members to see the film this afternoon.

13 More important, may I take this opportunity
14 to announce that today in the Judicial Branch is the
15 birthday today for our attractive delegate Susan Kahl.
16 Her age is not announced but she has not been kissed.
17 Appropriate greetings may be extended.

18 THE PRESIDENT: Delegate Moser.

19 DELEGATE MOSER: Mr. President, the Committee
20 on Local Government will reconvene at 7:30 this evening.
21 We are taking at some point in the evening final action

1 votes. Tomorrow morning at 9 a.m. we have scheduled an
2 opportunity for all delegates who have introduced
3 proposals who have not been heard to be heard. This would
4 include by our calculations the following proposals.
5 277, by Delegate Singer, which has been re-referred to
6 our committee and is similar to his proposal 418. Delegate
7 Proposal 422, by Delegate Byrnes, introduced today and
8 Delegate Proposal No. 426, introduced by Delegate Fornos
9 today.

10 THE PRESIDENT: Delegate Morgan.

11 DELEGATE MORGAN: Mr. President, the Committee
12 on the Executive Branch will meet immediately following
13 this plenary session. We will continue our consideration
14 of the issues raised by Sections 4.20, 4.21, and 4.22 of
15 the Commission draft. We did not conclude our delibera-
16 tions on Friday as we hoped because we ran out of time
17 but we hope to finish then today.

18 We will also meet at 8 o'clock this evening
19 if necessary.

20 THE PRESIDENT: Any further announcements
21 by committee chairmen? Delegate Koss.

1 DELEGATE KOSS: Mr. President, the Committee
2 on Suffrage and Elections will continue its consideration
3 and votes as necessary on frequency of elections tomorrow
4 morning at 10 o'clock.

5 THE PRESIDENT: Delegate Gallagher.

6 DELEGATE GALLAGHER: Mr. President, ladies
7 and gentlemen of the Convention, the Committee on the
8 Legislative Branch will meet tonight at 7:45 and tomorrow
9 morning at 9:30. Those members of the Convention who
10 were invited to appear before us to discuss their
11 proposals between 2 and 3:30 this afternoon but who were
12 unable to attend are invited to join us tonight at 7:45.
13 Repeating, those who were invited to attend today between
14 2 and 3:30 to discuss their proposals are invited to
15 attend tonight at 7:45.

16 THE PRESIDENT: Delegate Boyer.

17 DELEGATE BOYER: Mr. President, since several
18 committee members have indicated the desire to witness
19 the film, we will meet, the General Provisions Committee
20 will meet this evening at 7:30. We will again meet
21 tomorrow morning at 9:30.

1 THE PRESIDENT: Any further announcements by
2 committee chairmen? Delegate Clarke.

3 DELEGATE CLARKE: If it is in order to, with
4 relation to Delegate Proposal No. 421, there is a
5 slight change I would like to offer. After the word
6 Hutchinson, comma, by request.

7 THE PRESIDENT: Will each delegate please note
8 on his copy of Delegate Proposal No. 421 that it is
9 introduced by the sponsoring delegates by request.

10 Any further announcements? If not, the
11 Chair recognizes Delegate Powers, Chairman of the
12 Committee on Calendar and Agenda.

13 DELEGATE POWERS: Mr. President, I move we
14 adjourn until 2 p.m. tomorrow.

15 THE PRESIDENT: All in favor, signify by
16 saying Aye; contrary, No. The Ayes have it. So ordered.

17 (The Convention adjourned at 4:47 p.m.)
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Maryland Room
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College Park, Md.

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3 CONSTITUTIONAL CONVENTION

4 OF THE

5 STATE OF MARYLAND
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10 Chamber of the House of Delegates

11 State Capitol

12 Annapolis, Maryland

13 October 31, 1967 - 2 p.m.
14
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16

17 HONORABLE H. VERNON ENEY,
18 PRESIDENT
19

20 Reported by:
21 W. P. Banister

1 THE PRESIDENT: The Convention will please
2 come to order.

3 The invocation today will be offered by the
4 Reverend Keith W. Custis of the Riverdale Presbyterian
5 Church, University Park; Reverend Custis

6 (Whereupon the invocation was offered by the
7 Reverend Custis.)

8 THE PRESIDENT: Roll call

9 (Whereupon the roll call was taken.)

10 THE PRESIDENT: Has every delegate answered
11 roll call? The Clerk will record the roll call. There
12 being a quorum present, the Convention is in session.

13 The Chair recognizes Delegate Powers, Chairman
14 of the Committee on Calendar and Agenda.

15 DELEGATE POWERS: Mr. President, I move the adoption
16 of today's calendar.

17 THE PRESIDENT: Is there a second?

18 (Whereupon the motion was seconded.)

19 THE PRESIDENT: All in favor, indicate by
20 saying Aye; contrary, No. The Ayes have it, motion is
21 carried and calendar is adopted.

1 Reports of other standing committees. We have
2 one report today, Committee Report No. SF-1. The Clerk
3 will read the Report.

4 MR. QUILLEN: Committee Report No. SF-1 by the
5 Committee on State Finance and Taxation, Joseph Sherbow,
6 Chairman, A Report on the proposed omission from the Con-
7 stitution of Article III, Section 35A of the present
8 Constitution providing as follows:

9 "Section 35A. Nothing in this Constitution shall
10 exempt the salary or compensation of any judge or other
11 public officer from the imposition by the General Assembly
12 of a non-discriminatory tax upon income."

13 THE PRESIDENT: Report No. SF-1 is referred to
14 the Committee on Calendar and Agenda.

15 DELEGATE SHERBOW: Mr. President?

16 THE PRESIDENT: Delegate Sherbow.

17 DELEGATE SHERBOW: Do I gather a report of this
18 nature, which calls for no action on the part of the Con-
19 vention, is one which may not necessarily come back to the
20 Floor again?

21 THE PRESIDENT: No, on the contrary, this report

1 as I understand it, will call for action by the Convention
2 either to approve or disapprove. At the proper time
3 determined by the Committee on Calendar and Agenda it will
4 be on the calendar, will probably be referred to the Com-
5 mittee of the Whole for debate and recommendation to the
6 Convention.

7 DELEGATE SHERBOW: Thank you.

8 THE PRESIDENT: Next item is introduction and first
9 reading of proposals.

10 Before we come to that, however, there is memoran-
11 dum accompanying Delegate Proposal No. 195 by Delegate
12 Finch, memorandum accompanying Delegate Proposal No. 287
13 by Delegate Finch, memorandum accompanying Delegate Proposal
14 No. 322 by Delegate Finch.

15 There is only one proposal today, Delegate Pro-
16 posal No. 443. The Clerk will read the proposal.

17 MR. QUILLEN: Delegate Proposal No. 443, by
18 Delegate Gallagher, A Proposal that Section 3.03 of Article
19 III of the Constitution, dealing with the Legislative
20 Branch, provide for a permanent redistricting commission
21 which shall progressively reapportion the State on an

1 election to election basis, to read as follows.

2 THE PRESIDENT: Delegate Proposal No. 443 is
3 referred to the Committee on the Legislative Branch.

4 Are there any motions or resolutions? If not,
5 that concludes the business of the Convention for the
6 moment other than announcements.

7 Prior to recognizing the Chairman of the Com-
8 mittee on Calendar and Agenda to move that the Convention
9 resolve itself into the Committee of the Whole, I would
10 like to comment very briefly as to the procedure to be
11 followed when the Convention is resolved into the Committee
12 of the Whole.

13 I point out to you that when the Committee of
14 the Whole concludes its deliberations, the Committee will
15 rise and report to the Convention. Accordingly, when the
16 Committee rises, will all delegates please remain in your
17 seats because the session of the Convention will immediate-
18 ly resume. It will not have adjourned.

19 As I indicated to you, the Parliamentarian has
20 prepared a memorandum highlighting fairly briefly the
21 procedures of the Committee of the Whole. Unfortunately,

1 it is not available for you today in printed form. I think
2 I can summarize very briefly the salient provisions so
3 that you may have them in mind.

4 The Committee of the Whole is, as its name im-
5 plies, a Committee of the Convention, the presiding officer
6 is therefore the Chairman and not the President of the
7 Convention.

8 When you desire the Floor therefore address
9 the Chair as "Mr. Chairman" and not as "Mr. President."

10 The Committee of the Whole does not adjourn,
11 has no power to adjourn. Instead it rises. Its session
12 ends when the Committee rises. At the proper time Delegate
13 Powers will move that the Committee rise and it then reports
14 to the Convention.

15 A motion for the previous question is not in
16 order in the Committee of the Whole unlike the Convention.
17 So that you cannot shut off debate by such a motion.

18 In the present instance there is no limitation
19 on debate in the Committee of the Whole other than the
20 Convention Rule which limits debate to fifteen minutes per
21 delegate.



1 In other sessions, as you all know, the Committee
2 on Calendar and Agenda will propose a schedule, debate
3 schedule, which will limit debate in accordance with a
4 prearranged scheme between the proponents and opponents
5 on any particular proposition. The Committee did not deem
6 it wise or necessary that that be done in connection with
7 the matter which will be before the Committee of the Whole
8 this afternoon. Accordingly, there is no limitation on
9 the debate.

10 Unlike the Convention, the delegates are not
11 limited to one speaker on a question. Therefore, a delegate,
12 although limited to fifteen minutes at any one time, may
13 speak more than once in the Committee of the Whole.

14 Very briefly the procedure in the Committee of
15 the Whole will be that the Chair will call to the Clerk's
16 rostrum the Chairman of the Committee for a brief presen-
17 tation of the Report of the Committee, followed by a very
18 brief period of questions solely for the purpose of clari-
19 fication. This is not a period of debate either by the
20 Chairman of the Committee or by the delegates. Its sole
21 purpose is presentation of the Report and questions to



1 clarify the Report.

2 This will be followed by a period which today
3 could be very brief, if any at all, of general debate,
4 a period during which amendments to the question before
5 the Committee are not in order. Simply a general debate on
6 the whole proposition.

7 In view of the shortness of the recommendation
8 today, and the fact that it is not particularly complex,
9 I would anticipate that the general debate would either
10 be very, very brief or none at all. Following the general
11 debate, the recommendation before the Committee of the
12 Whole is open for amendment. The spokesman for the
13 Minority has priority to be recognized in presenting the
14 amendment. You have before you today a Minority Report
15 and several printed amendments. At the proper time I will
16 recognize the spokesman for the Minority to present the
17 Minority Report and move his amendments.

18 Following that any other delegate may present
19 amendments and of course, these amendments are subject to
20 debate. For what purpose does Delegate Malkus rise?

21 DELEGATE MALKUS: Mr. Chairman, I believe that

1 you mentioned there will be a brief explanation of the
2 subject matter before us. We are certainly not limited
3 by time in this early stage. Many of us do not know what
4 is going on in other committees.

5 Would it not be more generous if we had a com-
6 plete explanation of the subject matter? Some of us can't
7 be everywhere at all times. I really would like to know
8 what the subject matter is about, and I hope that the
9 committee chairman, whoever he may be, will be generous
10 and tell us not in brevity but in detail.

11 THE PRESIDENT: There is no intention on my part
12 by the use of the word "brief" to indicate that the com-
13 mittee chairman will be subject to any limitation in pre-
14 senting his report. Merely to point out to you that at
15 that period of the proceeding before the Committee of the
16 Whole it is the function of the committee chairman to
17 present his report, not to debate it. When it comes to
18 general debate, the committee chairman, speaking from his
19 seat as a delegate, will be able to speak as an advocate
20 and debate the matter.

21 If there are no questions at this point, the

1 Chair recognizes Delegate Powers, Chairman of the Committee
2 on Calendar and Agenda.

3 DELEGATE POWERS: Mr. President, I move the
4 Convention resolve itself into the Committee of the Whole for
5 the purpose of considering general orders of the day.

6 (Whereupon the motion was seconded.)

7 THE PRESIDENT: I call to the attention of the
8 Chairman that the motion in the form he presents it will not
9 allow general debate on the motion. Was that the intention
10 of the mover?

11 DELEGATE POWERS: No, it was not the intention
12 to limit debate.

13 THE PRESIDENT: Would you amend your motion to
14 provide that the Convention resolve itself into the Com-
15 mittee of the Whole and that general debate be permitted?

16 DELEGATE POWERS: Very well. I move that the
17 Convention resolve itself into the Committee of the Whole
18 for the purpose of considering orders of the day and that
19 general debate be permitted.

20 THE PRESIDENT: Is there a second?

21 (Whereupon the motion was seconded.)

1 THE PRESIDENT: Any discussion? Are you ready
2 for the question? All in favor, signify by saying Aye;
3 contrary, No. The Ayes have it, it is so ordered.

4 The Committee of the Whole is now in session.

5 (Whereupon at 2:18 p.m. the Convention resolved
6 itself into the Committee of the Whole.)
7
8

9 THE CHAIRMAN: I call to your attention that
10 at this point in the proceeding the Sergeant at Arms re-
11 moves the mace. This is a convenient device whereby
12 any delegate who may have to absent himself from the Floor
13 for a brief interval can at a glance know whether you are
14 assembled in Convention or in the Committee of the Whole.
15 If you are in the Committee of the Whole, the mace is not
16 on the rostrum. If you are in the Convention, the mace
17 is always on the rostrum. I understand the tape is out.
18 We will pause for just a moment.

19 The Chair recognizes Delegate Boyer, Chairman
20 of the Committee on General Provisions for the purpose of
21 presenting Committee Recommendation No. GP-1. Delegate

1 Boyer, will you please take the Clerk's desk?

2 DELEGATE BOYER: Mr. President, fellow delegates
3 of this Convention, your General Provisions Committee is
4 very proud to have this singular honor of making its
5 first Committee report to this distinguished body. As we
6 unfurl the canvas of our proposal, our recommendation for
7 today, and sail out of the relatively safe, serene and
8 calm harbor of our committee rooms, onto an unexplored
9 and unchartered sea, it appears that this Convention is at
10 this point entering into a new phase of convention delibera-
11 tions.

12 I think Senator Malkus has made a very pointed
13 recommendation. If I were to place myself in his position,
14 I could see where it would be impossible for those who
15 are not on the General Provisions Committee to understand
16 exactly how we came to this point today.

17 So if you will allow yourselves to perhaps be
18 placed behind our chairs as we in our Committee worked over
19 the proposal on militia, it might be helpful to help you
20 understand and explain to you why we make this recommenda-
21 tion.

1 One thing we do have in common here today, all
2 of us are on the same footing. I assume this is the first
3 Constitutional Convention that we each have attended.
4 Certainly, it is the first I have ever been to. Perhaps
5 so with my friends. With your patience if I pull a boo-boo
6 on some of this, we will work it out some way or other.

7 You have in your books GP Recommendation No. 1.
8 I think it would be superfluous and time-consuming to read
9 it to you now. You also have in your books the memorandum
10 accompanying this recommendation. I think it would be a
11 waste of time to read that. So all we can do here now is
12 perhaps to supplement what you have before you now.

13 We started in General Provisions Committee on
14 basic assumption No. 1 was a militia necessary? After
15 perhaps one, not objection, but one questionnaire on it,
16 we decided there should be something in the Constitution
17 about a militia. So from there we tried to formulate the
18 wording, the language that should cover what at that time
19 seemed to be the sense of the Committee. Remember again
20 this is all new to us as it is to you.

21 So the recommendation that you have in your books

1 at the time it was passed out of the Committee, I under-
2 s and there have been some changes of mind; but at the time
3 it was the sense of the Committee that this recommendation
4 should come before you in its present form. Actually,
5 there were and are to the best of my knowledge only two
6 points of dispute in the Committee. Number one, "That
7 the General Assembly shall by law provide for a militia"
8 or that "The General Assembly may". The one word "shall"
9 or "may" was obstacle number one to the General Provisions
10 Committee. We took several votes on this. At the time
11 the recommendation was finally passed out of the Committee,
12 it was an 8 to 10 vote that it should be "may" instead
13 of "shall". The reason for this at that time was that it
14 was felt that this should be permissive rather than manda-
15 tory. It was felt that it should be left up to the General
16 Assembly for the formation of this militia.

17 It was felt, or it was expressed, rather, that
18 the General Assembly if directed, if it shall, if it should
19 be made mandatory, with no further authorization for get-
20 ting into the many wrinkles of detail, that the General
21 Assembly could fulfill its obligation of a mandatory militia

1 by perhaps appointing a token force of three or five or
2 ten men or something like that. So it was expressed in the
3 General Provisions Committee that to compel the General
4 Assembly to create the militia would really be an exercise
5 in futility unless we would in the Constitution spell out
6 in great detail all the ramifications and facets of its
7 organization.

8 At that time in the Committee, it was felt that
9 this would be superfluous and unnecessary. Therefore,
10 we left the details to the legislative representatives of
11 the people.

12 The other area of dispute and conflict in the
13 Committee was whether or not the governor, who by unanimous
14 agreement should have been and will be the Commander-in-
15 Chief, whether he should appoint "all other officers" or
16 whether he should appoint "the Adjutant General and other
17 officers". This, too, passed by several votes, by an 8 to
18 10 vote. I understand that today a minority report is
19 being offered and that conceivably, ironically enough, that
20 the majority of the Committee has signed the minority re-
21 port. I say this is all new to all of us. You will hear



1 more about that later, I am sure.

2 The Committee's feeling at the time that the
3 Report was passed out on the point of the Adjutant General,
4 as I said, there was no dispute about the governor being
5 the Commander-in-Chief, that he should have the authority and
6 responsibility to appoint militia officers, but there was,
7 as I say, great discussion about naming in the Constitution
8 the creation of an Adjutant General specifically. By this
9 8 to 10 vote at the time this particular office was not
10 specifically enumerated because it was expressed that
11 changing times, conditions, mores, could possibly neces-
12 sitate deletion of such a specifically named official and
13 create conditions calling for another executive officer
14 by perhaps another name.

15 These, I say, were the two major points of dis-
16 pute. We had this 8 to 10 vote on these two points. When
17 we then came to an adoption in toto of the whole package
18 of the Committee recommendation that you now have before
19 you as GP-1, we took a vote, and by a 12 to 4 vote it was
20 agreed to present this recommendation to the Floor with --
21 I emphasize this -- with the reservation to each member of

1 the Committee to either act in concert with the Committee
2 recommendation or to be relieved of any further loyalty to
3 this recommendation.

4 As you can see, conceivably some members of the
5 seven minority may be opposed to the word "shall". On
6 the other hand, some may approve the word "may" but be
7 opposed to the insertion of the specific enumeration of
8 "Adjutant General". You have a duplication here, an over-
9 flow, where those who may not specifically oppose one point
10 or one dispute of the recommendation could by a joining
11 of forces be opposed, and the minority could become the
12 majority if you understand what I mean.

13 So we brought out to the Floor of this Conven-
14 tion General Provisions Recommendation No. 1. There was
15 discussion on other points that I think might be helpful
16 to you by way of explanation. We agreed, for instance,
17 that the governor should have the right to order the militia
18 to active duty upon certain conditions and contingent im-
19 plications. We inserted specifically the word "order"
20 because it was told to us by our distinguished military
21 witnesses that "order" had more of a military connotation



1 than perhaps "to call out the militia". Invasions are not
2 a probability but could be a possibility, and the governor
3 should have the express authority to act in such an event.
4 Likewise it was felt that the Committee not unanimously,
5 but it was a strong majority that the governor should have
6 the right to repel invasions if and when they could or would
7 occur.

8 It was unanimously agreed that he could use the
9 militia when necessary to enforce the execution of the laws
10 of the State. It was further agreed that the proposal
11 at this point still did not cover all contingencies such
12 as floods, hurricanes, forest fires, or other large scale
13 conflagrations, and additional language was added to the
14 proposal to cover these and to allow the governor and the
15 militia to act where life or property may be imperiled on a
16 large scale.

17 It was felt that the military authority created
18 hereby should forever -- I emphasize this because it was a
19 strong feeling of the Committee on this point -- that the
20 military authority created hereby should forever remain
21 under civil control so as to forestall any possibility of



1 the creation of an uncontrollable military machine or force.
2 The language was added to provide this in the person of the
3 governor.

4 Discussion about his absence or disability or
5 succession in the chain of command of the governor were
6 mentioned, but after careful consideration, it was deter-
7 mined by your Committee not to include these problems here
8 upon the condition that such language would be covered in
9 the Report of the Executive Branch.

10 Lastly, your Committee wanted to insure that
11 only militia members when in actual service would be sub-
12 ject to trial by military court and so provided this in
13 your recommendation. This creates the protection of a
14 civilian from a military trial and at the same time provides
15 for a guarantee that military authorities can discipline
16 its own personnel should such an occasion arise.

17 Your Committee also wanted to make it crystal
18 clear that militia men are subject to military force only
19 while actually in active service and so provided.

20 Mr. President, ladies and gentlemen of the
21 Convention, your General Provisions Committee is acutely



1 aware of its responsibility and is desirous of meeting
2 these in the presentation of this Report. May I publicly
3 congratulate and thank the members of the General Provisions
4 Committee for the many hard hours of work we put in on this
5 and particularly the subcommittee that handled this par-
6 ticular recommendation chaired by Delegate Edward Clarke
7 and Delegates Vecera, Blair and Ritter. Mr. President, that
8 is the Committee supplementation of the General Provisions
9 Committee Report No. 1 on militia.

10 THE CHAIRMAN: Are there any questions of Dele-
11 gate Boyer for purposes of clarification? Delegate Chabot?

12 DELEGATE CHABOT: I would like to inquire of
13 the Chairman of General Provisions, in listing the purposes
14 for which the governor may order out the militia the Com-
15 mittee determined to add to the existing provisions of the
16 Constitution the language "and provide assistance at such
17 times" and so forth. I want to, I would like to know
18 whether it is clear that the "at such times" language is
19 intended to modify only "provide assistance" or whether
20 the "at such time" language is intended to provide a
21 limitation on the other circumstances under which the



1 militia may be ordered out.

2 DELEGATE BOYER: The language "at such times"
3 was intended -- we went into great discussion about the
4 wording on this, Delegate Chabot -- there was suggestion
5 that the militia could only be called out when "great
6 destruction of life or property" or words to that effect
7 is imminent. We felt this was not correct. It didn't
8 go as far as the Committee wanted. For that purpose we
9 added the wording "at such times when great destruction
10 of life or property may be imperiled or may occur". The
11 words "may occur" were deliberately chosen by the Committee
12 also because we felt this would not only allow the governor
13 to call out the militia after a disaster, national or
14 otherwise, but also in the event that such a disaster may
15 occur. So we deliberately chose the words "may occur" to
16 cover both before and after any catastrophe that seemed
17 in the wind.

18 THE CHAIRMAN: I don't know that the answer you
19 have given, Delegate Boyer, answers Delegate Chabot's ques-
20 tion. As I understand it, his question was whether the
21 words "at such times" are intended to modify only the



1 preceding words "provide assistance" or whether they also
2 limit the right to order the militia to active duty to
3 repel invasions, suppress insurrections and enforce laws of.

4 DELEGATE BOYER: I think "at such times" should
5 be an all-inclusive phrase to cover all contingencies.

6 THE CHAIRMAN: Is there any further question?
7 Delegate Bamberger?

8 DELEGATE BAMBERGER: Mr. Chairman, I should like
9 to ask the gentleman two questions. I should like to ask
10 the gentleman whether the words "active duty" on Line 11
11 and the words "actual service" on Line 19 mean different
12 things so that a member of the militia may be subject to
13 trial in a military court when not in active duty but en-
14 gaged in some other activity presumably a lesser activity,
15 but which is actual service.

16 DELEGATE BOYER: Delegate Bamberger, on Line 11
17 the words "The governor may order the militia to active
18 duty" means at such times as he in his opinion feels it
19 necessary, he can call them out or order them up for active
20 duty.

21 The wording "active service" on Line 19, we went

1 into this at some length, and we felt that someone who
2 may not be called up on active duty for a catastrophe, let's
3 say, but perhaps may be flagrantly in violation with mis-
4 conduct of some sort while on a National Guard night,
5 he would then be in actual service although not an active duty.

6 THE CHAIRMAN: Delegate Bamberger?

7 DELEGATE BAMBERGER: I should like to ask the
8 gentleman another question. On Lines 17 and 18 the Com-
9 mittee recommendation adds to the Commission's Draft the
10 words "in the person of the governor". Is it the intent
11 to diminish the power of the General Assembly over the
12 militia by those words? If it is not the intent, was
13 there any expression in the Committee about a concern that
14 vesting this civil control over the militia in the governor
15 and presumably exclusively in the governor does, in fact,
16 diminish the power of the General Assembly over the militia?

17 DELEGATE BOYER: Certainly it was not the intent
18 to diminish the power of the General Assembly. We felt
19 that somebody had to be the captain of this team, and the
20 governor should be the Commander-in-Chief. I believe this
21 was the unanimous opinion of the Committee. As I stated,

1 we wondered what would happen in the event the governor
2 should not be available for some reason or other, and we
3 left that up to the wording of the Executive Branch without
4 getting into the details here of saying "should the governor
5 not be available." Our main purpose was to perpetuate
6 and keep control of the militia in the hands of civil
7 authorities in the person of the governor or his represen-
8 tative as may be spelled out elsewhere in the Constitution.

9 THE CHAIRMAN: Delegate Bamberger?

10 DELEGATE BAMBERGER: I should like to ask the
11 gentleman whether there was a specific intention in adding
12 to the Commission Draft the words "in the person of the
13 governor" at Lines 17 and 18, and what was that intention?
14 I take it from your prior answer that it adds nothing to
15 Lines 9 and 10 which say that "the governor shall be the
16 Commander-in-Chief of militia".

17 DELEGATE BOYER: No, probably it is our inten-
18 tion to emphasize the fact that we want this militia con-
19 tinually and perpetually in civil control in the person of
20 the governor. That was our intent of adding the words
21 "in the person of the governor"; so it would be irrevocably
clear this was our intent.

1 THE CHAIRMAN: Any further questions?

2 Delegate White.

3 DELEGATE WHITE: I am concerned with the two
4 words "may occur" on Line 15 of the draft proposal would
5 authorize the Governor to enforce the execution of the
6 law. I am wondering if the committee felt that the draft
7 language or even the language which exists in the
8 present Constitution did not give the Governor sufficient
9 power to act and to enforce the law, if it is the intent
10 of the committee to require the Governor to anticipate
11 actions and to actually give the militia an order to
12 move against a group of citizens before an overt act
13 occurs.

14 DELEGATE BOYER: Delegate White, it was our
15 intention to specifically add the words "may occur"
16 because there is a strong possibility perhaps that
17 what with the meteorologic materials we have now a hurri-
18 cane can be forecast knowing it may strike Ocean City
19 or a forest fire, that is an afterthought, some
20 catastrophe that may occur, the Governor, we felt,
21 should have proper authority to act in advance rather

1 than wait until the house was on fire.

2 THE CHAIRMAN: Any further questions?

3 Delegate Bothe. Before you start, may I remind all
4 delegates that it is imperative that you keep the micro-
5 phone two to three inches from your mouth because other-
6 wise we get the hum from the feed-back. Delegate Bothe.

7 DELEGATE BOTHE: Might I ask the Chairman
8 to enlighten us as to the committee's thinking on the
9 reasons why it was necessary to have a militia article
10 in the new Constitution.

11 DELEGATE BOYER: There was very little discus-
12 sion on this, Delegate Bothe. We started off with the
13 assumption as a general question should we include it or
14 not and it was, as I say, an overwhelming vote, first go-
15 round, whether or not we should have the militia included
16 in the Constitution. We didn't get very much in depth
17 into discussion of it. It seems to be so self-evident that
18 it is in the present one, which doesn't necessarily make
19 it good or proper, but militias are recognized, as I recall,
20 in 48 out of perhaps 50 Constitutions of other states.
21 There has to be some military law enforcement force, not

1 necessarily in a military sense, but perhaps to assist in
2 times of trouble of forest fires and things like this.
3 This was a readily available force for the Governor to
4 have at his command as a civilian in order to expedite
5 proper state procedures and functions. It seemed so
6 self-evident to us that we didn't go too much in detail
7 on it.

8 THE CHAIRMAN: Delegate Henderson.

9 DELEGATE HENDERSON: Mr. Chairman, I find
10 great difficulty with the phrase which has been referred
11 to before in Line 14 "at such times." "Such" I take it,
12 is a reference back like "said." It would refer back to
13 the times, that is, invasions, insurrections, and
14 execution of laws. Then the last phrase "when great
15 destruction of life and property may occur" would seem
16 to me to limit the power to call them out only in those
17 instances which previously are named and that only when
18 great destruction may occur.

19 I can hardly believe from what has been said
20 that that was the intention of the committee but merely
21 as a matter of draftsmanship, it occurs to me that should

1 be clarified somewhere along the line.

2 THE CHAIRMAN: Are you asking a question of
3 the chairman of the committee, Delegate Henderson?

4 DELEGATE HENDERSON: I would ask him if
5 that is his intention.

6 DELEGATE BOYER: The intention, Judge, as I
7 indicated, was to make at such times an all-inclusive,
8 as you properly state, relating back to all these other
9 specific instances, that the Governor may in those instances,
10 enforcement of law, repel **invasions**, repress insurrec-
11 tions, et cetera, at such times as they may occur.

12 THE CHAIRMAN: Delegate Wheatley.

13 DELEGATE WHEATLEY: Mr. Chairman, if the
14 Chairman will yield just one moment on the question asked
15 by Delegate Bamberger, perhaps I might elaborate on his
16 inquiry as to the question relating to "in the person of
17 the Governor."

18 THE CHAIRMAN: Does the chairman of the
19 committee yield to the vice-chairman of the committee for the
20 purpose of answering the question?

21 DELEGATE BOYER: Very gladly.

1 THE CHAIRMAN: You may proceed.

2 DELEGATE WHEATLEY: The question here does
3 relate back to the original reference to the Governor.
4 However, testimony indicated that there may be problems
5 if the words "civilian control" would be interpreted
6 to mean civilian officials who might be involved in a
7 joint operation where there might be a civilian official
8 present, that if the National Guard or militia, depending
9 upon which reference we are using here, were in a
10 particular place, that the exclusive civilian control
11 should be through the Governor and not through various
12 other civilian officials. So that the reference to "in
13 the person of the Governor" refers back to the chain of
14 command rather than being in a more general sense as it
15 might be interpreted to mean some other civilian official.
16 That was the thinking behind the specific reference at that
17 point.

18 THE CHAIRMAN: Any further questions?
19 Delegate Marion.

20 DELEGATE MARION: Mr. Chairman, I would like
21 to ask one or two questions of the Chairman of the

1 General Provisions Committee with respect to Line 10,
2 appointment of officers. Am I correct that under the
3 present Constitution the Governor of the State appoints
4 the Adjutant General? Does he also appoint the Assistant
5 Adjutant General and other officers below the Adjutant
6 General?

7 DELEGATE BOYER: I am not positive, Delegate
8 Marion. Perhaps Delegate Clark, who got into the
9 committee on this, may answer, if I may yield to Delegate
10 Clarke.

11 DELEGATE CLARKE: It is the general practice
12 that the Governor appoint the Adjutant General. The
13 Adjutant General then nominates such other officers as
14 he feels he needs to have an adequate staff and the
15 Governor then commissions those officers.

16 THE CHAIRMAN: Delegate Marion.

17 DELEGATE MARION: Then is it correct that the
18 committee intends the language "shall appoint as
19 officers" means the Governor shall have power to
20 appoint not only the Adjutant General but Assistant and
21 all colonels and majors and captains and lieutenants

1 down to second lieutenants in the Maryland National
2 Guard?

3 DELEGATE CLARKE: The intent is to permit the
4 Governor to appoint its officers in the sense that he
5 appoints the Adjutant General and such other top officers
6 as seems desirous. He then, based upon the recommendation
7 of the Adjutant General, if there is one, or the Chief
8 of Staff and the ranking officers would then commission
9 the other officers which would, I believe, be tantamount
10 to appointment.

11 THE CHAIRMAN: Any further questions,
12 Delegate Marion?

13 DELEGATE MARION: One other question of the
14 chairman of the committee with respect to language
15 "when in actual service" on Line 19. Is it the intention
16 of the committee that members of the militia may be
17 subject to trial for offenses which are committed while
18 they are in actual service or that they may be tried only
19 when they are in actual service which might be a much
20 more limited concept in point of time?

21 DELEGATE BOYER: It was the intent that they

1 would be eligible for trial when committing an offense
2 while in actual service. Otherwise, they would be subject,
3 of course, to civilian criminal procedures.

4 DELEGATE MARION: So that if someone committed
5 an offense while he was on active duty or in actual
6 service, he could be tried by a military court even
7 though several weeks or months or years later he was no
8 longer in that service.

9 DELEGATE BOYER: If he acted in a dishonorable
10 manner wearing the uniform or while on actual service,
11 he would be subject to military discipline.

12 DELEGATE MARION: Thank you.

13 THE CHAIRMAN: Any further questions for purposes
14 of clarification? Delegate Harry Taylor.

15 DELEGATE HARRY TAYLOR: I have one question
16 to ask the chairman of the General Provisions Committee.
17 How much thought did the committee give to the use of
18 the word "great" on the 14th line? It occurs to me we
19 may require the Governor to sit back and witness
20 destruction of life and property up until a point that
21 he determines that it becomes great and that might be

1 an embarrassing wait.

2 DELEGATE BOYER: Delegate Taylor, this question
3 did come up at great length. We deleted the word "great,"
4 tried to find another synonym to substitute for it. We
5 felt we should limit this word "destruction" and not
6 just make it a minor automobile accident or something like
7 that. But only where, we could find nothing more
8 descriptive, more all-inclusive than "great destruction"
9 and have to leave it to the good faith and intelligence
10 of the Governor to determine what he considers great.

11 DELEGATE HENDERSON: If you eliminate the
12 word "great," wouldn't you still leave it to his wisdom
13 and discretion as to whether or not --

14 DELEGATE BOYER: We felt it would probably be
15 more opportune and more appropriate to at least put this
16 restriction on the Governor. Perhaps in your opinion
17 it accomplishes nothing but the committee felt it at
18 least did put a floor, if not a ceiling.

19 THE CHAIRMAN: Any further questions for
20 purposes of clarification? Delegate Hardwicke.

21 DELEGATE HARDWICKE: I would like to pursue

1 with the chairman the line of questioning, I believe,
2 Delegate Bothe commenced, which is whether or not if
3 we remain silent in the Constitution with regard to the
4 militia, it is the opinion of the chairman that the
5 legislature would have the power to create a militia
6 and to empower the governor to do the things which he
7 is empowered to do in CD1.

8 DELEGATE BOYER: It is my understanding that
9 where the Constitution may be silent in any respect and
10 not restrictive, that perhaps the legislature would not
11 be illegally passing laws to do such a thing as this.
12 However, we felt also in a matter we discussed today that
13 where the present Constitution does have some wording
14 about a particular subject and the proposed Constitution
15 should be silent on it, it sort of tacitly implies that
16 it opens the door to all sorts of innuendoes that perhaps
17 we would not want to have accomplished. So we felt that
18 in following Delegate Bothe's suggestion here that some-
19 thing should be definitely in the Constitution about the
20 militia department.

21 THE CHAIRMAN: Delegate Hardwicke.

1 DELEGATE HARDWICKE: Would it not be true, Mr.
2 Chairman, that this Convention could make it abundantly
3 clear that in not providing for a militia as you propose
4 that we do not intend, by the failure to provide, to
5 exclude this power from the General Assembly and if we so
6 stated in this Convention would that not clarify the fact
7 that the legislature would have the right to enact this
8 as a matter of law?

9 DELEGATE BOYER: Certainly this Convention,
10 being all powerful, can make any suggestion or recommenda-
11 tions to the legislature. We just felt that you were
12 either for it or against it or be silent, just three
13 alternatives that you had. We felt it was more appropriate
14 to continue the pattern established in the 1867
15 Convention by continuing it over to the 1967 Convention.

16 THE CHAIRMAN: The Chair recognizes next
17 Delegate Willoner still for the purpose of questions.
18 Let me say before Delegate Willoner speaks that in keeping
19 with the announcement made several days ago, arrangements
20 have been made that a member of the staff and secretaries
21 are available in my office for any delegates who desire to

1 have any amendments prepared while the Committee of the
2 Whole is in session. Mr. Phillips is available to
3 assist you. Delegate Willoner.

4 DELEGATE WILLONER: Mr. Chairman, my
5 question has been asked and answered. Thank you.

6 THE CHAIRMAN: Delegate Lloyd Taylor.

7 DELEGATE TAYLOR: Mr. Boyer, I refer to Lines
8 17 and 18. It states that "The Military authority of
9 the State shall be and remain subject to civil
10 control in the person of the Governor at all times."
11 Does the "at all times" rule out the possibility of the
12 Governor delegating this authority, say, to a Lieutenant
13 Governor or, say, if the Mayor of Baltimore City or
14 Mayor of Cambridge would ask for the militia to come
15 in, would it be possible for the Governor to delegate, say,
16 partial authority to the Mayor of Cambridge or Baltimore
17 City under this provision?

18 DELEGATE BOYER: Any right to delegate, of
19 course, infers that you have the right to rescind such
20 delegation. So you would always by the Constitution retain
21 control of all delegative powers and the rescission

1 of them in the person of the Governor. So that we would
2 have it under civilian control at all times. It is true
3 the Governor could call in militia for a forest fire and
4 give the delegation to the Adjutant General or somebody
5 else. But it remains, the ultimate control remains in
6 the person of the Governor.

7 THE CHAIRMAN: The Chair recognizes Delegate
8 Finch for purpose of asking a question

9 DELEGATE FINCH: What would prevent the
10 Governor from appointing himself as military commander-
11 in-chief?

12 DELEGATE BOYER: The Constitution, our recommen-
13 dation is that the Governor shall be the commander-in-
14 chief. I don't know what your interpretation of
15 military commander-in-chief is.

16 DELEGATE FINCH: Under this provision as I
17 interpret since he can appoint officers, he can also
18 appoint himself as military commander-in-chief in addition
19 to being the civilian commander-in-chief.

20 DELEGATE BOYER: I think that might be in con-
21 flict with the recommendation if it is adopted by this

1 Convention because it says he shall be commander-in-chief.
2 I think this would be the restriction on him that this
3 is all that he could be.

4 THE CHAIRMAN: Delegate Weidemeyer.

5 DELEGATE WEIDEMEYER: Mr. Chairman, I don't
6 want to belabor the point but going back to Line 10, that
7 sentence, it appears to me in reading this that --

8 THE CHAIRMAN: Delegate Weidemeyer, this is only
9 for purpose of questioning.

10 DELEGATE WEIDEMEYER: Did you mean that those
11 three provisions in there where it says "The Governor may
12 order the militia to active duty to repel invasion,
13 suppress insurrections, enforce the execution of the laws,"
14 did you intend that those three provisions and powers
15 for calling out the militia were dependent upon that
16 last part of the sentence where it says "and provide
17 assistance at such times when great destruction of
18 life or property may occur."

19 DELEGATE BOYER: No, sir, that was not the
20 intention. The intention was as it says there to repel
21 invasions, suppress insurrections, and enforce the law,

1 which is a pretty broad blanket coverage, enforce
2 execution of laws, and provide assistance.

3 DELEGATE WEIDEMEYER: That would give four
4 categories of power.

5 DELEGATE BOYER: Yes, sir.

6 DELEGATE WEIDEMEYER: That's what I wanted to
7 clear up and find out.

8 DELEGATE BOYER: Thank you.

9 THE CHAIRMAN: Delegate Carson is recognized
10 for the purpose of asking questions.

11 DELEGATE CARSON: Delegate Boyer, the
12 sentence "The military authority of the state shall be and
13 remain subject to civilian control in the person of the
14 Governor at all times" -- I question whether it was the
15 intention of the committee for that to preclude the
16 Federal Government from federalizing the guard at any
17 time.

18 DELEGATE BOYER: In my humble opinion, this
19 would not preclude the Federal Government from federalizing
20 the guard. I think the Federal law would be paramount in
21 dealing with this and in times of all emergency when the

1 Federal Government decided or declared the Maryland
2 National Guard was necessary they would certainly have
3 the right to supersede and override any conflict there
4 might be here. I don't think there is a conflict because
5 it is not our intention to handcuff the Federal
6 Government.

7 THE CHAIRMAN: The Chair recognizes Delegate
8 Johnson for the purpose of asking a question.

9 DELEGATE JOHNSON: Mr. Chairman, I believe
10 that Delegate Weidemeyer asked the question that I was
11 about to ask. But without suggesting an amendment,
12 perhaps I could find out from the Chairman of the
13 General Provisions Committee whether or not by inserting
14 the word "other" on Line 14 as to "such other times,"
15 whether or not that represents the sense of the committee.

16 DELEGATE BOYER: I think it would be appropri-
17 ate to say that this did represent the sense of the
18 committee.

19 DELEGATE JOHNSON: I just wanted to understand
20 it, thank you.

21 THE CHAIRMAN: The Chair recognizes Delegate

1 Bennett for the purpose of asking a question.

2 DELEGATE BENNETT: Mr. Chairman, did you take
3 into account the situation which arose in California
4 when during the Watts riot the Governor was out of the
5 country and they were unable to mobilize the National
6 Guard on that occasion?

7 DELEGATE BOYER: Yes, sir, we considered not
8 specifically the Watts problem but we considered the
9 general area of your discussion, your question here.
10 We, as I said, Delegate Bennett, made a recommendation
11 that we would limit civil control in the person of the
12 Governor and not specifically enumerate that if he is
13 disabled or out of the country or unavailable for any
14 reason whatsoever, that we would not enumerate then the
15 Lieutenant Governor or go on down the chain of command,
16 on the assumption and provision that this language of
17 succession of command would be included in the Executive
18 Branch Committee.

19 THE CHAIRMAN: Any further questions of the
20 chairman of the Committee on General Provisions for
21 clarification? Delegate Groh.

1 DELEGATE GROH: Mr. Boyer, I again return to
2 Lines 17 and 18. Did the committee find any conflict
3 there with the situation where the President of the United
4 States may, if desired, take command of the militia or
5 may federalize the militia?

6 DELEGATE BOYER: We could find no conflict.
7 I don't in fact recall it was even mentioned in the
8 committee necessarily. I don't think any of the
9 witnesses, I might stand corrected on this, but it was
10 certainly not our intention to run eyeball to eyeball or
11 muzzle to muzzle with the Federal Government in conflict
12 on this. We felt Federal law would certainly supersede
13 anything if there was a conflict.

14 THE CHAIRMAN: Any further questions of the
15 Chairman of the Committee on General Provisions for the
16 purpose of clarification? If not, thank you, Delegate
17 Boyer.

18 DELEGATE BOYER: Thank you, Mr. President. We
19 will have perhaps another phase of this, the minority
20 report.

21 THE CHAIRMAN: Yes, we will now proceed to the

1 next step which is the general debate. I mention to you
2 again that this is not the time for offering or debating
3 amendments, a time for general debate on the entire sec-
4 tion, as, for instance, whether you think such a section
5 is or is not necessary. The Chair recognizes
6 Delegate Boyer. Do you wish to continue in general debate?

7 DELEGATE BOYER: Mr. President, I think that
8 in line with the committee recommendation that everyone
9 has available, in line with my supplemental remarks, in
10 line with the questioning in depth by the members, I
11 think that the committee could probably add very little
12 in the way of debate without prolonging the session.

13 I think it would be appropriate at this time to rest on
14 what has been said so far on this point. I don't know
15 whether it is proper at this time to move the recommenda-
16 tion of the committee report.

17 THE CHAIRMAN: Not necessarily. The recommenda-
18 tion is before the committee --

19 DELEGATE BOYER: We stand on it.

20 THE CHAIRMAN: Is there any further discussion
21 as part of general debate? If not, we will proceed to

1 consider amendments. You have a minority report No. GP-1
2 by Delegates Pullen, Kirkland, Caldwell, Sosnowski,
3 Blair, Vecera, Kathleen Robie, Wheatley and Key.

4 The Chair recognizes Delegate Pullen for
5 the purpose of presenting the minority report and making
6 or submitting any amendments. You may come to the
7 Clerk's desk, Delegate Pullen.

8 I should say while we are waiting for
9 Delegate Pullen to come forward that the practice of
10 having delegates speak from the Clerk's desk will be
11 followed only in the case of the committee chairmen, that
12 is the committee presenting the recommendation, and one
13 spokesman for the minority. Otherwise, all delegates
14 speak from their seats. Delegate Pullen.

15 DELEGATE PULLEN: Mr. Chairman, I present the
16 report of the minority of the Committee with the greatest
17 respect for those of the general committee who differ
18 from us.

19 I should like to say that I think Delegate
20 Boyer had made it clear that the minority now is actually
21 a majority of nine to six. Do not let that disturb you.

1 Being the son of a minister, I have seen many dramatic
2 convictions of error and conversion to righteousness and
3 right-doing. I hope you will pardon me for being
4 facetious, but with it all, that is there is a very good
5 spirit among the entire group. This minority report
6 concerning the militia, Article 28 of the Declaration of
7 Rights in the present Constitution of Maryland reads
8 as follows.

9 THE CHAIRMAN: Delegate Pullen, you don't
10 intend to read the entire minority report, I take it?

11 DELEGATE PULLEN: I thought if I started
12 talking, I would talk longer than if I read it.

13 THE CHAIRMAN: I think you will have to follow
14 the practice saying inasmuch as the report is before
15 the delegates, it should not be read.

16 DELEGATE PULLEN: Thank you for giving me
17 the opportunity to continue. I hope that each of you,
18 when you go back, will read that part of the present
19 Constitution which states that the regular militia is a
20 proper and natural defense of a free government and we
21 believe that and frankly we don't quite understand why



1 those two provisions or that provision was left out of
2 the draft Constitution.

3 There were two changes made in the wording
4 of the present Constitution or present provision for
5 the militia. The first is "may" was substituted for "shall."
6 And the term or rather the position of the Adjutant
7 General as a constitutional officer was eliminated.

8 Now the vote in the first case was eight to
9 seven and the last one or the second one lost by a tie vote
10 of eight to eight. The minority believes that a well
11 regulated militia is a safeguard of a democratic people.
12 The only, we believe further that to eliminate the
13 provision in a constitution for the maintenance of a
14 militia is an open invitation to the General Assembly
15 to abolish the militia. The police force of the state
16 is not adequate to take care of all of the problems that
17 face us. The only alternative here in times of stress
18 is to bring in the Federal troops by the President at the
19 request of the Governor. We oppose that except in the
20 case of the direst necessity.

21 The President of the United States is



1 commander-in-chief of the armed forces and the Governor
2 is commander-in-chief. The reason for this designation
3 is a very simple one. It is to establish a principle
4 that the military is subordinate to the civil and there
5 is no hint that the civilian leader or the civilian
6 head is a military leader but there is a danger that the
7 civilian head may conceive of himself as a military man
8 and take charge of the troops. History is replete with
9 such cases. And with disastrous results.

10 The framers of the State Constitution were
11 well aware of this, that is the Constitution of 1867,
12 and put a provision in that the Governor should not
13 assume control of the military without permission of
14 the General Assembly. The provision that calls for an
15 Adjutant General in our opinion should remain in there.
16 It is most important when the Army or when the militia is
17 a civilian army. Today when elected officials rush
18 to exciting spots with alacrity and in some cases attempt
19 to take charge of events, it is wise to protect people
20 against the possibility of undue assumption of authority
21 by a potential man on horseback. It is unfortunate that

1 the explanatory notes offer no comment or no reason why
2 the word "shall" was changed to "may" nor any explanation
3 of why it was done later, nor was there any reference
4 to the elimination of the position of Adjutant General.

5 These two omissions in the explanatory note
6 could be either due to carelessness or to intent and either
7 is unfortunate. The minority respectfully requests the
8 Convention to restore the word "shall" and to include the
9 naming of an Adjutant General in the draft. In the
10 language of the lawyers, *res ipsa loquitur*, the thing
11 speaks for itself. Thank you.

12 THE CHAIRMAN: Any questions of Delegate
13 Pullen, spokesman for the minority, for the purpose of
14 clarification of the minority report? Delegate Gleason.

15 DELEGATE GLEASON: I wonder if the delegate
16 could advise me if he knows the answer as to how many
17 state constitutions have the word "shall" rather than "may"
18 in them.

19 DELEGATE PULLEN: I don't know and I don't
20 think it makes too much difference. I hope you will
21 excuse me. I didn't mean that to be impolite. I don't



1 know.

2 THE CHAIRMAN: The answer to the question was
3 that Delegate Pullen did not know and did not think it
4 made too much difference.

5 DELEGATE GLEASON: You mean to the former
6 minority group?

7 DELEGATE PULLEN: I beg your pardon?

8 DELEGATE GLEASON: You mean to the former
9 minority group now become the majority? I thought this
10 was one of the points of your report was there was a
11 great feeling with respect to that word.

12 DELEGATE PULLEN: We had seven, now we have
13 nine, that want to use the word "shall" instead of "may."

14 DELEGATE GLEASON: I am getting your point
15 slowly. Let me ask one more question. I realize that
16 the delegate cannot speak for all the members of the
17 majority at this particular time but would he hazard
18 a guess that there is a sentiment or would be a
19 sentiment in the majority, present majority, if you will,
20 that this language be restricted a little bit severely
21 so that it just would provide that the General Assembly

1 shall provide by law for a state militia and its Governor
2 shall be its commander-in-chief -- period.

3 DELEGATE PULLEN: I find no fault with the
4 present language. It is shorter, it is taken from the
5 present Constitution. It has served pretty well and
6 carries out the purpose for which I think, on which I
7 think we agree. By the way, all nine of us signed this.

8 THE CHAIRMAN: Any further questions of
9 Delegate Pullen for purposes of clarification. Delegate
10 Johnson.

11 DELEGATE JOHNSON: Mr. Chairman, would it be
12 in order to ask the Chairman of the minority report to
13 recite for us the militia provision or militia proposal
14 exactly as the minority has decided it should read.

15 DELEGATE PULLEN: I intend to present that in
16 the form of amendment. It is very simple. The word
17 "may" becomes "shall" and the words "Adjutant General"
18 added. Very simple, very easy.

19 THE CHAIRMAN: Any further questions of
20 Delegate Pullen for the purpose of clarification? If
21 not, you may return to your seat and the Chair will



1 recognize you for the purpose of submitting an
2 amendment. The Chair recognizes Delegate Pullen.

3 DELEGATE PULLEN: Mr. Chairman, I would like
4 to present a recommendation for amendment and I apologize
5 to my colleagues in the minority for my legislative
6 ineptness. All these names should be included on this
7 amendment but through some means they were left off. I
8 feel a little lonesome. In Line 8 --

9 THE CHAIRMAN: If you will send the amendment for-
10 ward the Clerk will read it.

11 DELEGATE PULLEN: Yes, sir, the second one,
12 changing the word -- I am not sure I am quite proper,
13 Mr. Chairman. If you correct me and tell me what to do,
14 I will do it.

15 THE CHAIRMAN: I take it that you are offering
16 Amendment No. 1 to Committee Recommendation GP 1.

17 DELEGATE PULLEN: And Amendment No. 2.

18 THE CHAIRMAN: At this time we will take
19 Amendment No. 1. The Clerk will read the amendment.

20 MR. QUILLEN: Amendment No. 1 to Committee
21 Recommendation No. GP-1, By Delegate Pullen. In Line 8

1 on Page 1 of the printed Committee Recommendation No.
2 GP-1, strike out the word "may" and insert in lieu thereof
3 the word "shall."

4 THE CHAIRMAN: Amendment No. 1 is moved. Is
5 it seconded?

6 (The motion was duly seconded.)

7 THE CHAIRMAN: Moved and seconded. The Chair
8 recognizes Delegate Pullen for debate on the amendment.

9 DELEGATE PULLEN: I would like to submit GP-1
10 Recommendation 2.

11 THE CHAIRMAN: Let's proceed with 1. Do you
12 have any further comment with respect to Amendment No. 1,
13 Delegate Pullen?

14 DELEGATE PULLEN: No, sir.

15 THE CHAIRMAN: Is there any further discussion?
16 Are you ready for the question? The question arises on
17 the adoption of Amendment No. 1 to Committee Recommendation
18 GP-1. A vote Aye is a vote in favor of the adoption of
19 the amendment. A vote no is a vote against the amendment.
20 Are you ready for the question? All in favor of
21 Amendment No. 1 signify by saying Aye. Contrary, no. The

1 Noes seem to have it.

2 (There was a call for a roll call from the floor.)

3 THE CHAIRMAN: The Chair will accept the call.

4 Roll call.

5 (Whereupon a roll call vote was taken.)

6 THE CHAIRMAN: Have all delegates voted? Any
7 delegate desire to change his vote? The Clerk will record
8 the vote. There being 58 votes in the affirmative and
9 74 in the negative, the motion is lost. The amendment
10 fails. The Chair recognizes Delegate Pullen for the
11 purpose of submitting another amendment.

12 DELEGATE PULLEN: Mr. Chairman, I would like to
13 move the adoption of Amendment GP-2.

14 THE CHAIRMAN: The Clerk will read the amendment.
15 Amendment No. 2 to Committee Recommendation No. GP-1.

16 MR. QUILLEN: Amendment No. 2 to Committee
17 Recommendation No. GP-1 by Delegate Pullen. In Line 10 on
18 Page 1 of the printed Committee Recommendation No. GP-1, after
19 the word "appoint" strike out the word "its" and insert the
20 words "the Adjutant General and the."

21 THE CHAIRMAN: Is there a second?

1 (The motion was duly seconded.)

2 THE CHAIRMAN: The question arises on Amendment
3 No. 2 to Committee Recommendation GP-1. Does Delegate
4 Pullen desire to speak further? Any further discussion?
5 Ready for the question? The question arises on the
6 adoption of Amendment No. 2 to Committee Recommendation
7 No. GP-1. A vote Aye is a vote in favor of the amendment,
8 a vote No is a vote against. I think we better have a
9 roll call vote.

10 (Whereupon a roll call vote was taken.)

11 THE CHAIRMAN: Does any delegate desire to
12 change his vote? Have all delegates voted? The Clerk
13 will record the roll call. There being 49 votes in the
14 affirmative and 84 in the negative, the motion is lost
15 and Amendment No. 2 fails.

16 Are there any further amendments to be submitted
17 to the Committee Recommendation GP-1? Delegate Chabot.

18 DELEGATE CHABOT: Mr. Chairman, I understand
19 there is in the process of preparation the amendment that
20 had been discussed earlier. Is it in order for me to move
21 the amendment?

1 THE CHAIRMAN: Is the amendment in writing
2 now?

3 DELEGATE CHABOT: The amendment was submitted
4 in writing. I don't know if it has been officially
5 submitted.

6 THE CHAIRMAN: Is there a written copy here that
7 can be read?

8 DELEGATE CHABOT: The amendment is simply
9 to insert the word "other."

10 THE CHAIRMAN: The Chair has a printed copy
11 or typewritten copy of the amendment. The Clerk will
12 read Amendment No.3.

13 MR. QUILLEN: Amendment No. 3 to Committee
14 Recommendation No. GP-1, by Delegate Bamberger. In Lines
15 17 and 18 on Page 1 of Committee Recommendation No. GP-1,
16 strike out the words "in the person of the Governor."

17 THE CHAIRMAN: The question arises on Amendment
18 No. 3 to Committee Recommendation GP-1 moved by Delegate
19 Chabot. Is there a second?

20 DELEGATE BAMBERGER: Mr. Chairman.

21 THE CHAIRMAN: Do you rise to second?

1 DELEGATE BAMBERGER: No, Mr.Chairman.

2 THE CHAIRMAN: For what purpose does the
3 delegate rise?

4 DELEGATE BAMBERGER: Mr. Chairman, I rise to
5 correct the record. Delegate Chabot intended to offer an
6 amendment. However, the amendment read by the Clerk is
7 Amendment No. 3, which I intend to offer but have not yet
8 offered.

9 THE CHAIRMAN: Sorry. Delegate Chabot, inasmuch
10 as it has been read, would you yield to Delegate Bamberger
11 to submit?

12 DELEGATE CHABOT: I yield.

13 THE CHAIRMAN: Amendment No. 3. Delegate
14 Bamberger, do you move Amendment No. 3?

15 DELEGATE BAMBERGER: I move the adoption of
16 Amendment No. 3 to Committee Recommendation No. GP-1 which
17 has been read by the Clerk.

18 THE CHAIRMAN: Is there a second?

19 (The motion was duly seconded.)

20 THE CHAIRMAN: The Chair recognizes Delegate
21 Bamberger for purposes of debate on the amendment.

1 DELEGATE BAMBERGER: The purpose of the amendment
2 is to delete from Lines 17 and 18 the phrase "in the
3 person of the Governor." It is already perfectly clear
4 from the first or the second sentence of the Committee
5 Recommendation that the Governor is the chief officer,
6 the commander-in-chief of the military.

7 I offer the amendment because it appears to me
8 that the addition of or the vesting of exclusive control
9 over the military in the Governor contradicts what I
10 understand is the intention of the committee that the
11 General Assembly shall retain that power which it now has
12 to prescribe for the militia, to establish the organization
13 of the militia, to establish the rank and number of officers
14 of the militia, to set the appropriation for the militia.

15 I see no reason why civil control must be
16 vested exclusively in the person of the Governor. That,
17 simply stated, is the purpose of the amendment.

18 THE CHAIRMAN: Is there any further discussion?
19 Are you ready for the question? Delegate Boyer.

20 DELEGATE BOYER: I wonder if the maker of the
21 motion would yield to a question?

1 THE CHAIRMAN: Delegate Bamberger, do you
2 yield?

3 DELEGATE BAMBERGER: Yes, Mr. Chairman.

4 DELEGATE BOYER: If the amendment is
5 adopted, as I understand it, the sentence would then
6 read "The military authority of the state shall be
7 and remain subject to civil control at all times."
8 My question would be, sir, if this were true, would not
9 there be some confusion as to who or what or when was
10 civil control and would not civil control be left up in
11 nebulous limbo of scrambling for it or who might have the
12 civil control.

13 DELEGATE BAMBERGER: My answer to that is that
14 the first sentence empowers the General Assembly to provide
15 for the militia and in making that provision they would
16 establish such means of civil control as they thought
17 necessary.

18 THE CHAIRMAN: Any further discussion? Delegate
19 Wheatley.

20 DELEGATE WHEATLEY: Mr. Chairman, I would like
21 to speak in opposition to the amendment at this time.

1 THE CHAIRMAN: You may proceed.

2 DELEGATE WHEATLEY: It seems quite clear that
3 one of the intents of redrafting a constitution is to
4 delineate powers. One of the frequently heard cries is
5 that we should give the executive of this state greater
6 powers.

7 One of the responsibilities that I understand
8 the executive of this state to have is to see that the
9 laws of the state are executed or enforced. It seems quite
10 anomalous to me that we now designate him as the commander-
11 in-chief and then state that the General Assembly by law
12 may provide some diminution of this power by, for example,
13 as I understand the amendment, to allow if the Governor
14 calls out the militia, the mayor of a city, or sheriff
15 or county commissioner as a civilian, might be able to
16 control the militia when it is used, would then be able to
17 in effect countermand or in some way diminish the chain
18 of command or line of authority.

19 I submit that if we strike out this concept, we
20 are really putting in an illusory promise that we have
21 created for the people of the state a militia for their

1 protection and for the enforcement of the laws but in
2 effect we are saying they may or may not be created and
3 if they are, the Governor, as chief executive, really
4 may or may not have a direct line of command authority.

5 It would put the Governor in a very
6 embarrassing position, I submit, to call out the
7 militia and then at some stage of the game perhaps have
8 this power by law enacted under law of the General Assembly
9 diminished to the point he might have others giving orders
10 and commands ostensibly at least under his direction.

11 For that reason I think it fitting that we do
12 standardize and streamline the chain of command that we
13 have had for many, many years and continue it in the
14 Governor or let's not put something in the Constitution
15 that really presents somewhat of a placebo to the public
16 in thinking we still have a militia under the Governor's
17 control. For that reason, Mr.Chairman, I oppose the
18 amendment.

19 THE CHAIRMAN: Any further discussion?
20 Delegate Bamberger.

21 DELEGATE BAMBERGER: I do not disagree with

1 Delegate Wheatley that the Governor shall be commander-in-
2 chief.

3 The second sentence of the amendment says
4 he shall be commander-in-chief. There is only one chief,
5 only one commander-in-chief, and nothing the legislature
6 can do can make anybody else commander-in-chief and a
7 commander-in-chief less than a commander-in-chief.

8 THE CHAIRMAN: Delegate Wheatley.

9 DELEGATE WHEATLEY: Mr. Chairman, it was my
10 understanding that in response to the question of
11 Delegate Boyer the record would indicate that the mover
12 of the amendment suggested that the legislature by
13 enactment may provide alternate means of control of
14 the militia. If I am incorrect in that, I would like at
15 this time to have the maker of the amendment restate
16 his answer but I thought I heard that quite clearly, and
17 to my mind this does not indicate a straight line of
18 control from the Governor on down and would not preclude
19 the legislature by law from providing alternate means for
20 control once the Governor, as commander-in-chief, had
21 called out the militia.

1 THE CHAIRMAN: Any further discussion? Are
2 you ready for the question? Delegate Clarke?

3 DELEGATE E. J. CLARKE: I rise in opposition.

4 THE CHAIRMAN: Sorry. I should say E. J. Clarke.
5 You may proceed.

6 DELEGATE E. J. CLARKE: I rise in opposition
7 to the amendment for reasons stated by Delegate Wheatley
8 and would like to add that the testimony by General Gelston
9 stated there was a situation where the authority of the
10 Governor was challenged. This is why we put it in to
11 emphasize it.

12 THE CHAIRMAN: Any further discussion? Are you
13 ready for the question? The question arises on the
14 adoption of Amendment No. 3 to Committee Recommendation
15 No. GP-1. A vote Aye is a vote in favor of the amendment.
16 A vote No is a vote against the amendment. All in favor,
17 signify by saying Aye; contrary, No. The Noes seem to have
18 it. The Noes have it. It is so ordered. The motion is
19 lost.

20 Delegate Chabot, there has been a series of
21 amendments prepared and passed to the Chair. They have

1 already been numbered. I will recognize you when we
2 reach the amendment that bears your name. The Chair
3 recognizes Delegate Bamberger for the purpose of presenting
4 Amendment No. 4.

5 DELEGATE BAMBERGER: Mr.Chairman.

6 THE CHAIRMAN: Delegate Bamberger.

7 DELEGATE BAMBERGER: Amendments are being
8 distributed on the desk which have not yet been offered.
9 For instance, I had prepared an Amendment No.4. I had it
10 prepared in the eventuality that I would want to offer
11 it. I have not offered it.

12 THE CHAIRMAN: I was just recognizing you for
13 that purpose. Do you desire to offer it?

14 DELEGATE BAMBERGER: No, sir.

15 THE CHAIRMAN: Delegate Bamberger, the Chair
16 has another amendment which bears the number 5 by you.
17 Do you desire to offer it?

18 DELEGATE BAMBERGER: Yes, Mr.Chairman, I offer
19 it.

20 THE CHAIRMAN: The Chair recognizes Delegate
21 Bamberger. Will you please mark this as Amendment No. 4.

1 The Clerk will read the amendment.

2 MR. QUILLEN: Amendment No. 4 to Committee
3 Recommendation GP-1, by Delegate Bamberger. In Line 14 of
4 Page 1 of Committee Recommendation No. GP-1, strike out
5 the words "at such time," and in Line 15, strike out the
6 words "may occur" and insert in lieu thereof the words
7 "is imminent."

8 THE CHAIRMAN: Is there a second?

9 (The motion was duly seconded.)

10 THE CHAIRMAN: The Chair recognizes Delegate
11 Bamberger for the purpose of speaking to amendment No. 4.

12 DELEGATE BAMBERGER: Mr. Chairman, the purpose
13 of the amendment is to clear up the ambiguity pointed out
14 by Delegate Henderson with respect to the words "at such
15 time." To make it clear that they do not refer back to
16 the antecedent paragraph, and its second purpose is to
17 make more definite that future events which may empower
18 the Governor to order the militia to active duty the words
19 now in the draft or in the committee recommendation are
20 words of a certain indefiniteness, empowers the
21 Governor to call out, to order the militia to active duty

1 when in his judgment a calamity may occur.

2 I suggest the substitution of the words "is
3 imminent" as being more definite, somewhat more restrictive
4 of the power of the Governor to take such drastic action
5 as to order the militia to active duty.

6 DELEGATE JAMES: Point of inquiry.

7 THE CHAIRMAN: Delegate James.

8 DELEGATE JAMES: Would the sponsor of the
9 amendment accept a request for a division of the question?

10 DELEGATE BAMBERGER: Yes.

11 THE CHAIRMAN: All right, the amendment will be
12 divided and we will take separately the portion embraced
13 in Lines 1, 2, and 3, and the portion embraced in Lines
14 5 and 6. We will consider first the portions embraced in
15 Lines 1, 2, and 3. Delegate Wheatley, do you desire the
16 floor with respect to that portion of the amendment?

17 DELEGATE WHEATLEY: Will the sponsor of the
18 amendment yield for a question as to the first section of
19 the amendment as presented?

20 DELEGATE BAMBERGER: I would if I knew what was
21 expected of me.

1 DELEGATE WHEATLEY: I am wondering what will be
2 the effect if the first part of the amendment were passed
3 and the second part defeated. Would the proponent of
4 the amendment care to speak?

5 DELEGATE BAMBERGER: I think they are clearly
6 divisible and they have been divided.

7 THE CHAIRMAN: Delegate Wheatley.

8 DELEGATE WHEATLEY: In that case, Mr. President,
9 I would like to speak in opposition to this amendment.

10 THE CHAIRMAN: Delegate Wheatley.

11 DELEGATE WHEATLEY: The committee spent great
12 time and delved into this matter very deeply. Perhaps the
13 history of this fourth aspect would best clear up the
14 matter under discussion.

15 The proposal as presently stated would indicate
16 four categories, first being from external causes, to
17 repel invasion, third being to suppress insurrection, to
18 be interpreted as those attempts to overthrow the government
19 from an internal source, the third portion to be a more
20 general provision, the traditional role of the executive
21 in enforcing the laws of the state, the fourth section

1 was incorporated to provide for those provisions not
2 specifically enumerated in the preceding three. "At
3 such times" being to designate national disasters and
4 in some instances perhaps man-made disasters.

5 For that reason it would seem to me that a
6 comma after the word "laws" would accomplish the purpose
7 intended by the maker of the motion if his intention is
8 to divide the four into categories to avoid the
9 ambiguity that might be present, for that reason I am
10 informed another delegate has prepared such amendment
11 and if this is his purpose, I suggest a comma after the
12 word "laws" would accomplish the purpose, thereby negating
13 any implication that this limitation might apply.
14 Therefore, I urge the defeat of the amendment.

15 THE CHAIRMAN: Any further discussion? Delegate
16 Henderson?

17 DELEGATE HENDERSON: Mr. Chairman, I suggest
18 the difficulty is in the use of the words "at such times"
19 which seems to refer back to the three preceding
20 sentences or categories.

21 The insertion of a comma would not in my opinion clear

1 that up. It is the use of the word "such" which causes
2 the difficulty. As I understand it, by striking out
3 "at such times" you would then have the four categories.
4 If "at such times" remains in there, I would read it as
5 limiting not only to the categories which had previously
6 been mentioned but requiring construction ^{of} "imminent" in
7 those categories so it would not be possible under the
8 amendment as drafted to call out the militia if, for
9 example, in the case of a forest fire or great earthquake.
10 The difficulty I find is with the word "such" and I would
11 speak for the amendment by deleting the words "at such
12 times" -- it seems to me the ambiguity is removed.

13 THE CHAIRMAN: Delegate Wheatley.

14 DELEGATE WHEATLEY: Without belaboring the
15 point, I would think the interpretation given by Delegate
16 Henderson would in any event, whether the amendment is passed
17 or defeated, at least accomplish the purpose of the committee
18 in categorizing four classifications and on that
19 particular point, I am in agreement with him.

20 THE CHAIRMAN: Any further discussion of the
21 amendment? Delegate Stern.

1 DELEGATE STERN: I have a question to you, sir.
2 If we are going to correct and put commas in and
3 correct language, isn't it Style and Drafting that will
4 get this after we do and will have the right, as I under-
5 stand it, if they feel it necessary, to change language
6 to make it more flowing, that the use of changing the sense
7 of what the Committee of the Whole has brought to the
8 attention of Style and Drafting -- wouldn't it be up
9 to them to correct the wording of it to the sense of the
10 persons without us here saying whether or not a comma
11 should be inserted and the Style and Drafting Committee
12 would make the changes they find necessary.

13 THE CHAIRMAN: So long as the intent of the
14 Committee of the Whole and of the Convention ultimately
15 is clear the Committee on Style and Drafting and
16 Arrangement would make changes, but changes of form only.
17 They would normally hesitate to delete words. They would
18 not have as much hesitancy in changing punctuation, I
19 think. Any further discussion on the amendment? Delegate
20 Boyer.

21 DELEGATE BOYER: Mr. President, I understand

1 that Delegate Chabot is going to have an amendment put
2 in to include after the word "such" the one word "other."
3 This would make it at such other times in order to carry
4 out the intent of the committee to establish the fourth
5 category in this proposal. For that reason and with the
6 anticipation that this amendment will be forthcoming
7 to include the word "such" by amendment -- by the
8 way, which I would support -- I would have to be opposed
9 to this particular amendment.

10 THE CHAIRMAN: Any further discussion? Delegate
11 Chabot.

12 DELEGATE CHABOT: I had prepared and had
13 intended to offer such amendment. In view of Judge
14 Henderson's comments, I think that the appropriate method
15 of obtaining the result that I want and evidently that
16 the Chairman of the committee wants and many others here
17 want, the appropriate method would be to accept that part
18 of Amendment No. 4 that is now before us.

19 THE CHAIRMAN: Any further discussion on the
20 amendment? Delegate Lloyd Taylor.

21 DELEGATE LLOYD TAYLOR: I would like to speak

1 in behalf of the amendment. I believe the words "at
2 such times" are superfluous. I believe the wording, as
3 Delegate Bamberger has put down, is adequate and really
4 covers the situation here.

5 THE CHAIRMAN: Any further discussion on the
6 amendment? Ready for the question? The question, as
7 divided, arises on the adoption of the amendment in
8 Line 14 of Page 1 of the Committee Recommendation GP-1,
9 strike out the words "at such times." A vote Aye is a
10 vote in favor of the amendment, a vote to strike out the
11 words. A vote No is a vote against the amendment, leaves
12 the language in the form presented to the committee. Are
13 you ready for the question? All in favor, signify by
14 saying Aye; contrary, No. The Ayes seem to have it.
15 The Ayes have it. Motion is carried. That portion of
16 the amendment is adopted.

17 The question now arises on the second portion
18 of the amendment in Line 15 to strike out the words
19 "may occur" and insert in lieu thereof the words "is
20 imminent." The Chair recognizes Delegate Wheatley.
21 For what purpose does Delegate Storm rise?

1 DELEGATE STORM: I don't mean to be picayune
2 but I just wondered. The way you read it sounded right,
3 "times," plural. The way it is printed sounded wrong.
4 "Time," singular. May I rely on the way you read it,
5 "times," plural as being the way we have it?

6 THE CHAIRMAN: There is a typographical error
7 in the amendment. The words in the recommendation which
8 are being stricken or, "at such times," plural. The
9 Chair recognizes Delegate Wheatley.

10 DELEGATE WHEATLEY: Would the proponent of
11 the amendment yield for a question?

12 THE CHAIRMAN: Delegate Bamberger, do you yield
13 for a question?

14 DELEGATE BAMBERGER: Yes.

15 DELEGATE WHEATLEY: What is the intention of
16 the amendment?

17 DELEGATE BAMBERGER: The intention of the
18 amendment is to make more definite the category of the
19 fourth instance in which the Governor may call out the
20 militia. The declaration now says when destruction occurs.
21 That seems to me to be somewhat ambiguous. Certainly

1 indefinite. The intention was to restrict that power
2 more by requiring the Governor to find that such destruc-
3 tion is imminent. More than a possibility but a
4 probability.

5 DELEGATE WHEATLEY: The intention is not only
6 to clarify but to restrict, is that correct?

7 DELEGATE BAMBERGER: It is at least an intention
8 to clarify. It may well have been that some people thought
9 "may occur" was imminent, was a probability rather than
10 a possibility.

11 DELEGATE WHEATLEY: Speaking in opposition to
12 the amendment, Mr. Chairman, it was the intention of the
13 committee, if I summarize it correctly, after discussing
14 the exact words suggested in the amendment, "is imminent,"
15 that "imminent" connotes immediacy. That might not be the
16 type of restriction we wish to place upon a Governor. In
17 fact, one member of the committee, if I remember correctly,
18 looked up the definition of the word and we were more
19 convinced that the imminency of the situation might not
20 be the type of thing we want. Imminent, as the definition
21 stated, requires something to be on the precipice. We

1 felt, number one, if I am wrong, any member of the committee
2 may correct me, that imminent was too extreme a term, that
3 hurricanes might be probable or possible, but we should not
4 say they are imminent in that he must wait until the last
5 moment to call out the militia. This is too restrictive.

6 Second part of the use of the words "may
7 occur" was to allow the Governor a retrospective view in
8 that after some great damage had occurred in which there
9 was no forecast, he might then call out the militia to
10 assist in an after the fact recognition.

11 Certainly there is no great pride in the use
12 of the words "may occur" but the intent of the committee
13 is clear, I believe, that we wish to give the Governor
14 latitude when life and property is at stake not to have to
15 wait until the last possible moment to determine if it
16 is imminent but may be probable and may be even possible
17 and for that reason we suggest words "it may occur" would
18 be too ambiguous. We would certainly welcome other words, I
19 am sure, that might be more of a clarifying term but
20 certainly the intent is to provide both prospective and
21 retrospective recognition of the Governor's responsibilities

1 to protect life and property and for that reason I must
2 oppose the amendment.

3 THE CHAIRMAN: Any further discussion? Delegate
4 Malkus.

5 DELEGATE MALKUS: Mr. Chairman, having lived in
6 Cambridge in recent years, there is every reason in the
7 world to vote against Delegate Bamberger's proposal.
8 If you can wait until a town is burned down or a horse is
9 stolen before you take precautionary measures, then you
10 vote for his proposal, but in this day and time, when
11 savagery and violence is among us at all times, we better
12 stand prepared, we better give the Governor, whoever he
13 may be, the right to go in and maintain order without
14 making a play on words.

15 THE CHAIRMAN: Any further discussion? Delegate
16 White.

17 DELEGATE WHITE: Mr. Chairman, I rise to support
18 the amendment that has been suggested by Delegate Bamberger.
19 I do believe -- this may sound again like a strange line-up
20 but I believe that the word "imminent" is very desirable
21 in these troubled times. If we do take the case of

1 Cambridge, certainly the word "imminent" and its meaning
2 will give the Governor sufficient power to make the right
3 decision on a timely basis. So I hope that we will
4 support the amendment as offered by Delegate Bamberger.

5 THE CHAIRMAN: Delegate Wheatley.

6 DELEGATE WHEATLEY: Mr. Chairman, might I
7 also point out the word "imminent" qualifies the fourth
8 category, not the third category, and therefore had
9 nothing to do with when the Governor would call the troops
10 or the militia or National Guard, as the case might be, to
11 enforce the laws of the state.

12 We are talking about a fourth category here
13 that might have nothing to do with enforcement of laws.
14 There is no law against hurricanes that I know of.

15 THE CHAIRMAN: Any further discussion? Delegate
16 Lloyd Taylor.

17 DELEGATE LLOYD TAYLOR: I rise to support the
18 amendment. I feel that in some cases it is not necessary
19 to call out the militia; the state police and the regular
20 police force can handle certain situations. In a situation
21 of Cambridge, the Governor did call out the militia and,

1 of course, the militia did its duty in Cambridge. Often
2 we find that through police intelligence many incidents
3 can be prevented. This is why I supported the amendment
4 by Delegate Bamberger.

5 THE CHAIRMAN: Delegate E. J. Clarke.

6 DELEGATE E. J. CLARKE: Mr. Chairman, I rise
7 in opposition to the amendment. As Delegate Wheatley
8 stated, we consulted three nationally accepted dictionaries
9 on the words "may occur" as against "is imminent."
10 One was Black's. Final suggestion in Black's Law
11 Dictionary is that "to the end that justice may not be
12 the slave of grammar."

13 THE CHAIRMAN: Any further discussion? Ready
14 for the question? Question arises on the amendment to
15 committee recommendation GP-1, Line 15, to strike out
16 the words "may occur" and insert in lieu thereof the
17 words "is imminent." A vote Aye is a vote in favor of the
18 amendment, changing the words, a vote No is a vote against
19 the amendment. All in favor, signify by saying Aye.
20 Opposed, No. The Noes seem to have it. The Noes have it --
21 call for a roll call.

1 (Whereupon a roll call vote was taken.)

2 THE CHAIRMAN: There being 25 votes in the
3 affirmative and 109 in the negative, the motion is
4 lost and the amendment fails.

5 Delegate Chabot, I take it from the comment
6 you made previously, you do not desire to submit the
7 amendment you prepared.

8 DELEGATE CHABOT: That is correct.

9 THE CHAIRMAN: Delegate Marion, do you desire
10 to submit an amendment?

11 DELEGATE MARION: Yes, Mr. Chairman.

12 THE CHAIRMAN: Do you have the amendment?

13 DELEGATE MARION: I have submitted amendment 6,
14 which I guess would be redesignated as Amendment 5.

15 THE CHAIRMAN: That is correct. The Clerk
16 will read the amendment.

17 MR. QUILLEN: Amendment No. 5 to Committee
18 Recommendation GP-1, by Delegate Marion. In Line 10 of
19 Page 1 of Committee Recommendation No. GP-1, strike out
20 the words "its officers" and insert in lieu thereof the
21 words "such officers as the General Assembly may by law

1 provide."

2 THE CHAIRMAN: Is the motion to submit the
3 amendment seconded? Is there a second?

4 (The motion was duly seconded.)

5 THE CHAIRMAN: The Chair recognizes Delegate
6 Marion to speak in support of the amendment.

7 DELEGATE MARION: Mr. Chairman, the purpose of
8 the amendment, first of all, is to limit the authority
9 of the Governor to appoint all of the officers of the
10 militia or the National Guard unless that be the will of
11 the General Assembly. There are hundreds of officers,
12 perhaps thousands of officers, of the militia in the state.
13 I did not understand that that was the intention of the
14 committee.

15 It also would provide some reference to the
16 words which appear in the Committee Recommendation "its
17 officers." Unless somebody provides for "its officers"
18 there seems to be no authority that it should have any.
19 Therefore, in an effort to clarify the recommendation of
20 the committee, I would urge adoption of this amendment.

21 THE CHAIRMAN: The Chair would like to ask a

1 question of Delegate Marion for the purpose of clarifica-
2 tion. I do not understand whether your amendment means
3 that the Governor would appoint such officers as the General
4 Assembly may provide law that he shall appoint or
5 whether your amendment means that the Governor shall
6 appoint such officers as the General Assembly may by law
7 provide that there shall be. If the General Assembly
8 provides by law for one thousand officers and is silent
9 as to appointment, what is the meaning of your amendment?

10 DELEGATE MARION: I thought for a minute I
11 was going to agree it was the former but I think the
12 purpose is the latter. The General Assembly should
13 provide by law for such officers of the militia and then
14 provide that the Governor should appoint those officers.
15 I suspect there would be many officers the Governor would
16 not appoint.

17 THE CHAIRMAN: I am not sure I understand your
18 amendment again. My question is this. Does the language
19 you have used mean that the Governor will appoint only
20 those officers which the General Assembly by law says he
21 shall appoint?

1 DELEGATE MARION: Yes, sir.

2 THE CHAIRMAN: Is there any further discussion?
3 Delegate Wheatley.

4 DELEGATE WHEATLEY: Mr. Chairman, I would
5 like to amplify your question somewhat if the maker of
6 the amendment would yield.

7 THE CHAIRMAN: Will Delegate Marion yield?

8 DELEGATE MARION: Yes.

9 DELEGATE WHEATLEY: Am I to understand if the
10 General Assembly provided by law for officers they in the
11 same law could say they would allow the Governor to appoint
12 those above the rank of colonel and the rest would not
13 be appointed by the Governor. My question is if this is
14 true, who would appoint these other officers, the
15 General Assembly or generals? Who would be the appointive
16 authority is my question.

17 THE CHAIRMAN: Delegate Marion.

18 DELEGATE MARION: I would think that would
19 be provided by law.

20 THE CHAIRMAN: Delegate Wheatley.

21 DELEGATE WHEATLEY: It would be possible for

1 the General Assembly to appoint some officers also under
2 your proposal.

3 DELEGATE MARION: If they would so provide, yes,
4 I think that would be possible. I am not sure that is
5 desirable but all I am trying to get at is what seems
6 to be an ambiguity in the words "its officers," since
7 having read that far in the proposal, I don't see that it
8 has any officers.

9 THE CHAIRMAN: Delegate Wheatley.

10 DELEGATE WHEATLEY: Mr.Chairman, in opposition
11 to the proposed amendment on the same basis with
12 which I opposed an earlier amendment, that being that
13 we must draw some clear lines of authority. I can think
14 of no valid reason why a commander-in-chief would delegate
15 the appointment of those under him to some other agency.
16 Nor do I think it right to allow another branch of
17 government to appoint those people.

18 I can see all types of abuses that might develop
19 from this. I think it would be foolhardy to establish a
20 principle where generals might appoint those under them.
21 I can see all kinds of abuses under this. Likewise, I

1 can see all types of abuses developing where the General
2 Assembly may begin appointing lieutenants and captains
3 and majors and colonels.

4 For that reason, I think we must again define
5 lines of authority and if we are making the commander-in-
6 chief of the militia the Governor of this state, I submit
7 just as the president indirectly -- and directly in the
8 final analysis if it were ever tested -- appoint all
9 commissions, all officers of the United States Government,
10 so should the Governor of this state have the authority
11 to appoint and commission those officers of the militia
12 such as they be provided by law.

13 THE CHAIRMAN: Delegate Schneider.

14 DELEGATE SCHNEIDER: Mr. President, I wonder if
15 I could ask this question of Delegate Wheatley.

16 THE CHAIRMAN: Will Delegate Wheatley yield
17 for a question?

18 DELEGATE WHEATLEY: Be most happy to yield,
19 Mr. Chairman.

20 DELEGATE SCHNEIDER: Appointment of the
21 officers of militia, technically speaking, is not appointment

1 of the officers of the Maryland National Guard because,
2 as I understand it, the Maryland National Guard, as such,
3 if it is called in as a militia to go into an area
4 the Governor calls the militia to order, then he might
5 have other officers, but this does not give the Governor
6 power to appoint all officers all the way down to second
7 lieutenant of the Maryland National Guard or of any
8 armed force which he has in the State of Maryland.

9 For that reason and in addition to my question,
10 I would say the ambiguity in Amendment No. 5 would cause
11 me to speak in opposition to it.

12 THE CHAIRMAN: What is your question, Delegate
13 Schneider?

14 DELEGATE SCHNEIDER: My question is: Am I
15 correct this does not give the Governor power to appoint
16 officers of the National Guard? Which I got from some
17 delegate's discussion that it was somewhat the belief of
18 some of them this would give him power over the whole
19 National Guard.

20 THE CHAIRMAN: Delegate Wheatley, you may
21 respond to the question.

1 DELEGATE WHEATLEY: To answer Delegate
2 Schneider's question, it is my understanding that the
3 National Guard is merely the organized militia of the
4 state and under present definition every able-bodied man
5 is a member of that militia and members of the opposite
6 sex with their consent, and therefore it would seem to
7 me that the existing procedure of the Governor appointing
8 those who serve under him is both sound from an organiza-
9 tional standpoint and also sound from the structure of
10 government which we seek to espouse.

11 THE CHAIRMAN: Any further discussion?
12 Delegate E. J. Clarke.

13 DELEGATE E. J. CLARKE: I rise in opposition
14 and would like to make one point clear. That it is
15 customary in military and militia for the Governor to
16 select and appoint the Adjutant General. It is also customary
17 and common practice for the Adjutant General to recommend
18 to the Governor those persons he wants the Governor to
19 commission as officers of the militia.

20 Acting upon his advice in most cases, the
21 Governor commissions them or, in other words, appoints

1 them.

2 THE CHAIRMAN: Any further discussion?
3 Delegate Fox.

4 DELEGATE FOX: Mr. Chairman, I rise in opposition
5 to the amendment and to ask Delegate Marion if he would
6 accept a substitute amendment. There have been some
7 ten or fifteen amendments prepared to the present time.
8 One of them would end this --

9 THE CHAIRMAN: State your substitute and we
10 will find out if Delegate Marion will accept it.

11 DELEGATE FOX: The General Assembly may provide
12 by law for a militia. The Governor shall be its
13 commander-in-chief -- period.

14 THE CHAIRMAN: Do I understand that your
15 substitute would be to strike out all of the committee
16 recommendation except the first two lines and the first
17 two words -- sorry -- Lines 8 and 9 and the first two
18 words of Line 10?

19 DELEGATE FOX: That is correct.

20 THE CHAIRMAN: Delegate Marion, do you desire to
21 respond? I doubt that is a proper substitute for this

1 amendment.

2 DELEGATE MARION: Could I inquire of Delegate
3 Fox how that would get at what I think I am trying to
4 get at by Amendment 5?

5 THE CHAIRMAN: I think we will save time if the
6 Chair rules it would not be a proper substitute and continue
7 the discussion on Amendment No. 5. Is there any further
8 discussion? Are you ready for the question? The
9 question arises on Amendment No. 5 to Committee Recommenda-
10 tion GP-1 to in Line 10, Page 1 of the Committee
11 Recommendation strike out the words "its officers" and in-
12 sert in lieu thereof the words "such officers as the
13 General Assembly may by law provide." A vote Aye is
14 a vote in favor of the amendment. A vote No is a
15 vote against the amendment. Are you ready for the
16 question? All in favor of the amendment, signify by
17 saying Aye; opposed, no. The Noes seem to have it. The
18 Noes have it. The motion is lost. The amendment is
19 rejected. Are there further amendments? The chair
20 recognizes Delegate Fox.

21 DELEGATE FOX: Mr. Chairman, could I now offer

1 the amendment which has been printed as Amendment No. 10
2 and it provides, as I indicated a moment ago, that this
3 recommendation would read that the General Assembly may
4 provide by law for a militia, the Governor shall be its
5 commander-in-chief.

6 THE CHAIRMAN: Just a second, Delegate Fox.
7 The Clerk will change the number to Amendment No. 6 and
8 will read the amendment.

9 MR. QUILLEN: Amendment No. 6 to Committee
10 Recommendation No. GP-1 by Delegates Cardin, Case,
11 Grumbacher, Fox, Carson, Gullett, Hanson, Hardwicke.
12 In Line 10 on Page 1 of Committee Recommendation No.
13 GP-1, after the word "chief," insert a period and strike
14 out the remainder of the section.

15 THE CHAIRMAN: Is there a second?

16 (The motion was duly seconded.)

17 THE CHAIRMAN: The Chair recognizes Delegate
18 Fox to speak to the amendment.

19 DELEGATE FOX: Mr. Chairman, I think the
20 debate we have had here is indicative of the fact that
21 we are getting bogged down in unnecessary detail. I

1 invite the attention of the committee to the language of
2 the Federal Constitution, which takes far fewer words
3 to deal with the establishment of an Army and Navy and
4 the authority of the commander-in-chief, the President
5 of the United States as commander-in-chief over them, than
6 does this committee recommendation. I suggest that
7 if the Constitution merely said that the General Assembly
8 may provide by law for a militia and the Governor shall
9 be its commander-in-chief, that that adequately covers
10 the situation and leaves the officers and all that sort
11 of thing up to the General Assembly.

12 THE CHAIRMAN: Is there any further discussion?

13 DELEGATE GLEASON: Mr. Chairman.

14 THE CHAIRMAN: The Chair recognizes Delegate
15 Gleason.

16 DELEGATE GLEASON: I wonder if the delegate
17 would yield for a question?

18 THE CHAIRMAN: Delegate Fox, do you yield for
19 a question?

20 DELEGATE FOX: Certainly.

21 DELEGATE GLEASON: Is the delegate under any

1 apprehension that perhaps the General Assembly would not
2 provide for a militia since the word is "may" rather
3 than "shall"?

4 DELEGATE FOX: Quite frankly, I am not
5 concerned whether they do or not.

6 DELEGATE GLEASON: Frankly, I will vote against
7 it.

8 THE CHAIRMAN: Any further discussion?
9 The Chair recognizes Delegate White.

10 DELEGATE WHITE: Mr. Chairman, members of this
11 Convention, it does appear that we are bogged down
12 some but I wonder, I don't mean this to be insulting, if
13 we are not sitting somewhat in an ivory tower here
14 attempting to anticipate certain things, we debated
15 whether or not the Governor should not have certain
16 specific guide lines as having a guide line as to something
17 that is probably on the verge of happening.

18 But we are already in a time of revolution. The
19 revolution is here while we are sitting here talking.
20 If we do empower a Governor to have unlimited powers of
21 discretion, maybe he better call somebody out now because

1 I don't know where it is going to fall next and I hope
2 we will take this seriously, what happened in America
3 today, deal with the actual issues because the revolution
4 is here. I don't know where it is going to break out.

5 THE CHAIRMAN: The Chair recognizes Delegate
6 Carson.

7 DELEGATE CARSON: Mr. Chairman, I voted for
8 the inclusion of the word "shall" originally but that
9 amendment lost. I feel very strongly there ought to be
10 a militia and National Guard in this state. However,
11 regardless of whether the word shall or may is used, and
12 the Convention has now decided, sitting as Committee of
13 the Whole, the word "may" shall prevail, I think it is then
14 necessary to examine what other provisions should be
15 here.

16 I suggest that anything further than the first
17 two sentences as now suggested are surplusage, legislative
18 in nature, and really a restriction upon the establishment
19 and the various functions of the National Guard or militia
20 and therefore I support strongly the amendment which has
21 been proposed by several delegates here.

1 THE CHAIRMAN: The Chair recognizes Delegate
2 Schneider.

3 DELEGATE SCHNEIDER: Mr. Chairman, generally
4 there is no good reason for putting provision in the
5 Constitution that says the General Assembly may do something
6 unless its omission would infer they may not do it. That
7 I do not think would be the case here.

8 However, we do have certain qualifications on
9 the right of the General Assembly and on the militia
10 once it is established. I think we can argue and agree
11 that they will establish the militia in the legislature.
12 There are certain rights involved here such as right of
13 not being tried by court martial unless you are in actual
14 service of the militia at the time the offense occurred
15 among others.

16 I think for the reason of putting these quali-
17 fications in the Constitution and not put them in just
18 with the Declaration of Rights saying if the General
19 Assembly does establish a militia, we should have these
20 rights, I think they fit better in a general section on
21 militia. I am in favor of the section as it has been

1 amended at this time and opposed to amendment No. 10 and
2 ready to tackle 5 through 9 when we get to them.

3 THE CHAIRMAN: Any further discussion? The
4 Chair recognizes Delegate Scanlan.

5 DELEGATE SCANLAN: I have a question of the
6 sponsor of the amendment. Is it your intention by the
7 amendment to leave it to the legislature to determine
8 the circumstance under which the Governor may call out
9 the militia or is it your intention to leave with the
10 Governor the right to call out the militia when in his
11 judgment in the exercise of the executive power it is
12 necessary or is it your intention to leave it in a
13 combination, the legislature designating certain occasions
14 and the executive having inherent right to call them out
15 on other occasions, and if so, what are those occasions.

16 THE CHAIRMAN: Delegate Fox.

17 DELEGATE FOX: I believe that the legislature
18 would pass the necessary enabling act so we would have
19 a state militia and in that act I think they would set up
20 the conditions under which and by whom it could be called
21 out -- I believe it should be left to the legislature.

1 The United States Constitution just says that
2 the President shall be the commander-in-chief of the Army
3 and says the Congress shall have the power to raise an
4 Army and Navy and that'a about all it says.

5 I don't see any reason we should get into the
6 detail in the Maryland Constitution in any greater degree
7 than it is done in the Federal Constitution.

8 THE CHAIRMAN: Delegate Wheatley.

9 DELEGATE WHEATLEY: I rise in opposition to the
10 amendment. I think Delegate Fox pointed out well that the
11 Federal Constitution is very brief in this regard. How-
12 ever, I would suggest this is a dangerous precedent to
13 establish for adopting or rejecting a given proposal.

14 If we follow this pattern, we would make no
15 provision at all for our courts other than say the
16 General Assembly may from time to time provide for a court
17 system. We might carry this reasoning a step further into
18 the field of local government and say that the General
19 Assembly from time to time shall provide for local
20 government.

21 I suggest that the reasons advanced by Delegate

1 Schneider are much more apropos and they are structured
2 at this point or attempting to structure and we are
3 setting up circumstances in which the Governor may exercise
4 this power and we are saying he is the one to exercise it.
5 I have been told in other states the Governor might have
6 abused this power. I am sure it is possible in this
7 state. I have been told in other states that the General
8 Assembly might abuse this power and I am certain this is
9 possible in this state.

10 So for that reason, I think we do have an
11 obligation to provide the structure just as a point to
12 give guidance without being domineering and I think we
13 are called upon to give guidance without being domineering.

14 I would also suggest the reasons advanced by
15 Delegate Schneider are very meaningful which are firmly
16 establishing in this proposal that the military will be
17 under the control of the civilian population. Finally I
18 think it is very important to spell out in some broad
19 detail, if I might use that contradiction, just what the
20 rights of civilians and military personnel are when it
21 comes to judicial proceedings.

1 For that reason, I urge very strongly adoption
2 of this amendment.

3 THE CHAIRMAN: Any further discussion.
4 Delegate Pullen. Delegate Wheatley.

5 DELEGATE WHEATLEY: I would like to correct my
6 last statement for the record if nothing else. That is
7 to say that I very strongly urge that we defeat the
8 proposed amendment.

9 THE CHAIRMAN: Delegate Pullen.

10 DELEGATE PULLEN: Mr.Chairman, I think this
11 is a very important matter and I am a little concerned
12 that we are moving away from the real purpose of the
13 militia. It is true, sir, that the Federal Constitution
14 speaks but little of the establishment of the armed
15 forces. However, I respectfully call attention to the
16 fact that the President of the United States on more than
17 one occasion has sent without approval of Congress
18 troops into places like Greece, Lebanon, Vietnam, and
19 others. I think that for our own protection we ought to
20 spell out the powers of the Governor and the powers of
21 the General Assembly in the use of the militia. If we

1 are going to have one, let's know what we are going to
2 do with it.

3 THE CHAIRMAN: Delegate Chabot.

4 DELEGATE CHABOT: Mr. Chairman, several of the
5 delegates have indicated that the United States Constitution
6 is exceedingly brief on this subject. I would like to
7 read the provisions from the United States Constitution
8 on the subject:

9 "To raise and support armies but no appropria-
10 tion of money for that use shall be for a longer
11 term than two years; to provide and maintain a navy; to
12 make rules for the government and regulation of land and
13 naval forces; to provide for calling forth the militia;
14 to execute the laws of the Union; suppress insurrection,
15 and repel invasions; to provide for organizing an army
16 and disciplining the militia, and for governing such
17 parts of them as may be employed in the service of the
18 United States, reserving to the states respectively the
19 appointment of the officers and the authority of training
20 the militia according to the discipline prescribed by
21 Congress."

1 I believe that we are not proceeding in greater
2 length or greater detail than the United States
3 Constitution on this particular subject.

4 THE CHAIRMAN: Delegate Hanson.

5 DELEGATE HANSON: Mr.Chairman, I rise in
6 support of the amendment. I think that the exercise
7 through which we have just gone in attempting to deal in
8 great detail with great details illustrates the wisdom
9 of keeping the Constitution in this matter as terse as
10 possible, to provide the essential power, to permit the
11 General Assembly to act, to clearly place the civilian
12 head of government as the commander-in-chief of the militia,
13 and leave to the legislative representatives and to the
14 Governor the responsibility for and the power to establish
15 the regulations governing the militia.

16 THE CHAIRMAN: Any further discussion?

17 Delegate Storm.

18 DELEGATE STORM: Just one comment, Mr.Chairman.
19 Our present Constitutional provision did not prescribe
20 in detail a number of things included in GP-1 as reported
21 out. It does seem to me that Delegate Fox's suggested

1 amendment enables us to plan for the future with the
2 militia. We all understand now what the militia does,
3 and the Governor has called it out, although he wasn't
4 empowered under the old Constitution to do it, sent them
5 down to Cambridge, didn't say anything about that in the
6 old one.

7 I think this is really detail. Remember that
8 in writing a constitution we will get a star for brevity
9 if we enable the Constitution to provide all the
10 necessities. I believe Delegate Fox has provided for all
11 the necessities.

12 THE CHAIRMAN: Delegate L. Taylor.

13 DELEGATE LLOYD TAYLOR: I would like to speak
14 against the amendment by Delegate Fox. I would speak from
15 practical experience. I feel in time of emergency and
16 time of danger you can't wait for the General Assembly
17 to meet and call out the militia.

18 I remember an experience a few years ago
19 down in a certain county in Maryland, I won't name the
20 county, but I was involved in a mob of people, and the
21 state troopers came in to save us. Of course, I believe

1 this is a practical matter, you can't wait for
2 the General Assembly to save lives.

3 THE CHAIRMAN: Any further discussion? Ready
4 for the question? The question arises on the adoption of
5 Amendment No. 6 to Committee Recommendation No. GP-1. A
6 vote Aye is a vote in favor of the amendment. A vote No
7 is a vote against the amendment. All in favor, signify
8 by saying Aye; contrary, no. The Noes seem to have it.
9 The Chair is in doubt. A roll call vote. A vote Aye is
10 in favor of the amendment. A vote No, a vote against.

11 (Whereupon a roll call vote was taken.)

12 THE CHAIRMAN: Has every delegate voted?
13 Does any delegate desire to change his vote? The Clerk
14 will record the vote. There being 39 votes in the
15 affirmative and 94 in the negative, the motion is lost.
16 The amendment fails. Delegate Weidemeyer.

17 DELEGATE WEIDEMEYER: Mr. President, I have
18 Amendment No. 11.

19 THE CHAIRMAN: Has it been circulated?

20 DELEGATE WEIDEMEYER: It has not been circulated
21 as far as I know.

1 THE CHAIRMAN: Just a second, Delegate
2 Weidemeyer. The amendment is now being circulated.
3 Please mark it Amendment No. 7. The Clerk will read the
4 amendment.

5 MR. QUILLEN: Amendment No. 7 to Committee
6 Recommendation No. GP-1, by Delegate Scanlan and
7 Weidemeyer. In Line 13 on Page 1 of Committee Recommenda-
8 tion GP-1, after the word "laws," insert a comma.

9 THE CHAIRMAN: Is there a second?

10 (The motion was duly seconded.)

11 THE CHAIRMAN: Delegate Weidemeyer, you may
12 speak to the amendment.

13 DELEGATE WEIDEMEYER: Mr. President, and
14 members of the Convention, this is one of the longer
15 amendments that has been introduced today, just inserting
16 a comma on Line 13 after the word "laws." We feel that
17 by the insertion of the comma it will clarify the meaning
18 and comply with the intention of the committee so that
19 there will be no doubt about there being four categories
20 of power as intended by the committee.

21 THE CHAIRMAN: Is there any further discussion?

1 Are you ready for the question? The question arises
2 on the adoption of amendment No. 7 to insert a comma
3 after the word "laws" in Line 13 on Page 1 of Committee
4 Recommendation No.GP-1. A vote Aye is a vote in favor
5 of the amendment. A vote No is a vote against the
6 amendment. All in favor, signify by saying Aye; contrary,
7 No. The Ayes seem to have it. The Ayes have it. The
8 motion is carried and the amendment is adopted.

9 Are there any further amendments? The Chair
10 recognizes Delegate Marion.

11 DELEGATE MARION: I rise, Mr. Chairman, to
12 offer Amendment No. 8, which is presently designated
13 Amendment No. 8.

14 THE CHAIRMAN: Just a second. The amendment is
15 now being distributed. The Clerk will read the amendment.
16 Will the committee please come to order.

17 MR. QUILLEN: Amendment No. 8 to Committee
18 Recommendation No. GP-1 by Delegate Marion. On Page 1 of
19 Committee Recommendation No. GP-1, strike out the last
20 sentence and add "A member of the militia may be subject
21 to trial by a military court in this state only for
offenses committed while the member is in actual service."

1 THE CHAIRMAN: Is there a second?

2 (The motion was duly seconded.)

3 THE CHAIRMAN: The Chair recognizes Delegate
4 Marion to speak to the amendment.

5 DELEGATE MARION: Mr. Chairman, the purpose of
6 the amendment is to clarify what seems to me either an
7 ambiguity in the last sentence of the committee's recommen-
8 dation or a misinterpretation which could well be put on
9 the language of that sentence, to indicate that "when
10 in actual service" refers not to the time when the
11 member may be tried but to relate to the offenses for
12 which he may be tried.

13 As I understood the Chairman of the committee
14 in answer to a question earlier, it was this which he
15 indicated the Committee had in mind when it reported out
16 the recommendation No. GP-1.

17 THE CHAIRMAN: Any further discussion? The
18 Chair recognizes Delegate Ritter.

19 DELEGATE RITTER: I would like to ask a
20 question of the maker of the amendment. In your opinion,
21 do you feel this would cover any offense committed while

1 the man was in training?

2 THE CHAIRMAN: Repeat the question.

3 DELEGATE RITTER: Would it cover any offense
4 during the time, the night a man was in training, say
5 the night the National Guard meets?

6 DELEGATE MARION: It incorporates only the
7 language which the committee recommends, which is when
8 in actual service. I confess I am somewhat at a loss to
9 explain what that means either in the committee recommenda-
10 tion or here. There was some discussion whether it should
11 be "active duty " in the last line or not. My purpose
12 was just to restructure the sentence so it provided for
13 the time of the commission of the offense rather than the
14 time of the trial.

15 THE CHAIRMAN: Delegate Weidemeyer.

16 DELEGATE WEIDEMEYER: I would like to ask the
17 sponsor of the amendment --

18 THE CHAIRMAN: Does Delegate Marion yield
19 for a question?

20 DELEGATE MARION: Yes.

21 DELEGATE WEIDEMEYER: -- if he realizes that

1 by striking out the last sentence beginning on Page 18, he
2 strikes out the limiting provision that only members of
3 the militia when in actual service may be subject to trial
4 by a military court in this state. Only members of the
5 militia means they cannot subject other civilians to
6 trial before that military court. To strike out destroys the
7 intent and purpose behind that sentence. While your sen-
8 tence may be good as to clarifying as to members of the
9 military service, it doesn't go far enough to prevent
10 civilians from being tried as does the draft of the
11 committee.

12 THE CHAIRMAN: Delegate Marion.

13 DELEGATE MARION: That was certainly not my
14 intention and if Delegate Weidemeyer will suggest clarifica-
15 tion of the language so that purpose might be effectuated,
16 I would be happy to accept it because I would certainly
17 like to make clear that no civilian may be tried by a
18 military court.

19 THE CHAIRMAN: Could the Chair suggest
20 language to you unless Delegate Weidemeyer has language.

21 DELEGATE WEIDEMEYER: If Delegate Marion would

1 accept a suggestion, it could be easily done by
2 adding the word "Only" on Line 3 of his amendment in front
3 of "a member."

4 THE CHAIRMAN: And perhaps if you did that,
5 Delegate Weidemeyer would want to add the words "and
6 then" before the word "only " in line 4.

7 DELEGATE MARION: Yes, sir.

8 DELEGATE WEIDEMEYER: Yes

9 THE CHAIRMAN: Delegate Marion.

10 DELEGATE MARION: Yes, Mr. Chairman, I was going
11 to suggest the "and then" before the "only" at the end
12 of Line 4. With those amendments I will accept those
13 amendments to my proposed Amendment No. 8.

14 THE CHAIRMAN: As the Chair understands it,
15 Amendment 8 has been amended or changed by the sponsor
16 to add the word "only" at the very beginning of the new
17 sentence in Line 3 and to add the words "and then"
18 before the word "only" in Line 4 so that the new
19 sentence would then read "only a member of the militia
20 may be subject to trial by a military court in this
21 state and then only for offenses committed while the member

1 is in active service." Does the seconder accept the
2 change?

3 The Chair recognizes Delegate
4 Clarke.

5 DELEGATE E. J. CLARKE: When we speak of the
6 militia, we speak of, according to Black's, the body of
7 citizens in a state enrolled for discipline as a military
8 force but not engaged in actual service except in
9 emergencies as distinguished from regular troops or standing
10 armies.

11 The militia or rather the National Guard of
12 this state only becomes the active militia when the
13 Governor calls them as such. When the National Guard
14 meets or the Air National Guard meets at regular drill
15 sessions weekly or on weekends or on training sessions
16 in the summer, they are not serving as the militia, they
17 are serving as the National Guard or the Air National
18 Guard.

19 THE CHAIRMAN: Is there any further discussion?
20 Delegate Johnson.

21 DELEGATE JOHNSON: I question then --

1 THE CHAIRMAN: Question is directed to whom.

2 DELEGATE JOHNSON: I am really not quite sure.
3 Perhaps to Delegate Marion. I am really not sure who this
4 should be directed to.

5 THE CHAIRMAN: Does Delegate Marion yield for
6 a question?

7 DELEGATE MARION: Delegate Marion will yield.
8 He doesn't guarantee to have the answer.

9 DELEGATE JOHNSON: It would seem then that this
10 amendment as amended would preclude members of the
11 National Guard to be subject to trial by military court.
12 Is that correct?

13 THE CHAIRMAN: Can you answer, Delegate Marion?

14 DELEGATE MARION: I don't know. I would
15 suggest Delegate E.J. Clarke might have the answer.

16 THE CHAIRMAN: Delegate E. J. Clarke, you furnish
17 the answer.

18 DELEGATE E. J. CLARKE: I just wanted to point
19 out again, Mr. Chairman, ladies and gentlemen of the
20 committee, that in my judgment, there are other
21 persons perhaps more qualified than I to speak on this

1 subject, that a member of the militia, any citizen,
2 in practice in the State of Maryland, the Governor uses
3 the National Guard and calls them out as the active
4 militia in cases of emergency.

5 While serving as members of the National
6 Guard in training periods in the evening or on weekends
7 or in summer drills, they are not then members of the
8 militia, they are members of the Army National Guard of
9 Maryland or the Air National Guard of Maryland.

10 THE CHAIRMAN: Does that answer your question,
11 Delegate Johnson?

12 DELEGATE JOHNSON: I believe it does, Mr.
13 Chairman, but it would then appear that if we were to
14 adopt this amendment, I must oppose it if I understand
15 the explanation, that inasmuch as the amendment provides
16 that only members of the militia may be subject to trial
17 by military court in this state, it would appear then
18 that members of the National Guard would not be subject
19 to trial by military court in this state. For that reason
20 I would have to oppose the amendment.

21 THE CHAIRMAN: Delegate Wheatley.

1 DELEGATE WHEATLEY: Mr. Chairman, if I might
2 add to the comment made by Delegate Clarke, the testimony
3 before the committee was that National Guard, as such,
4 constitutes organized militia and therefore would be a
5 part of the whole. I think this might clear up the
6 problem raised. This would include in my interpretation
7 National Guard since the National Guard would be a smaller
8 part of the whole. The qualifying language would be
9 actual service which would mean the vast body of militia
10 might be National Guard or other members of the militia
11 then in actual service.

12 This, incidentally, I think, is one of the most
13 troublesome areas of the whole law because of the use of
14 words with very particular meanings, "active duty" and
15 "actual service," and therefore we try to use the
16 broadest language, "actual service" rather than "active
17 duty." I think this amendment would include National
18 Guard since National Guard has been defined as the organized
19 militia.

20 THE CHAIRMAN: Any further discussion? The
21 Chair wants to direct an inquiry to Delegate Boyer, the

1 Chairman of the Committee on General Provisions. Delegate
2 Boyer, in an earlier draft of the Committee Recommendation
3 No. GP-1, which I saw the third word from the end in
4 Line 20 was "of" and not "in." I wonder if in this printing
5 it is a typographical error or is it deliberate that the
6 word "in" is intended?

7 DELEGATE BOYER: Mr. Chairman, this is a
8 typographical error and the proof should read at Line 20
9 "to trial by military court of this state" instead of "in."

10 THE CHAIRMAN: In the absence of objection,
11 the Chair will consider the typographical error corrected.
12 Is there any objection? The change is to strike the word
13 "in", the third word from the end of Line 20 and
14 substitute the word "of." So that it reads "subject to
15 trial by a military court of this state." I don't know
16 whether that has any bearing on the questions, the last three
17 or four questions, or not.

18 Any further discussion? Delegate Chabot?

19 DELEGATE CHABOT: Will Delegate E. J. Clarke
20 yield for a question?

21 DELEGATE E. J. CLARKE: Gladly.

1 DELEGATE CHABOT: Could the delegate explain
2 to us in just what way on this point the committee
3 report differs from the language that appears in
4 Article 32 of our present Declaration of Rights?

5 DELEGATE E. J. CLARKE: I don't have that language
6 before me, Delegate Chabot. You mean Federal?

7 DELEGATE CHABOT: Our Declaration of
8 Rights.

9 DELEGATE E. J. CLARKE: I think it is just a
10 different verbiage, Delegate Chabot.

11 DELEGATE CHABOT: Same meaning.

12 DELEGATE E. J. CLARKE: Same meaning as I
13 read it, yes.

14 THE CHAIRMAN: Any further discussion? Delegate
15 Marion.

16 DELEGATE MARION: Mr. Chairman, if the
17 language of GP-1 in Line 20 is changed from "in" to
18 "of," I would urge that the amendment which is before
19 us make the same change in Line 4 so that the word
20 "in" reads instead of "of."

21 THE CHAIRMAN: The sponsor changes the word

1 "in," the seventh word, I think it is, in Line 4 of the
2 amendment. Does the seconder accept the word? Is there
3 objection? If not, the word "in" is changed to the
4 word "of" in Line 4 of the amendment. Is there any
5 further discussion? Delegate Pascal.

6 DELEGATE PASCAL: Will the maker of the motion
7 yield to a question?

8 THE CHAIRMAN: To whom is your question
9 directed?

10 DELEGATE PASCAL: Delegate Marion.

11 THE CHAIRMAN: Does Delegate Marion yield for
12 a question?

13 DELEGATE MARION: Yes, I will yield.

14 DELEGATE PASCAL: Simply when an individual
15 is a member of the Maryland National Guard and on the way
16 to a meeting if he should violate the law while in uniform,
17 would he be prosecuted under a military court martial or
18 a civil court?

19 DELEGATE MARION: I stand to be corrected on
20 this but my understanding is that a part of the military
21 law of the state, and I don't think part of the

1 constitution, provides that a member of the National
2 Guard who is on his way to or from a regular meeting of
3 the National Guard is not subject to the civilian
4 authorities.

5 THE CHAIRMAN: Is there any further discussion?
6 Delegate Schneider.

7 DELEGATE SCHNEIDER: Mr. Chairman, this problem
8 of whether the Maryland National Guard may court martial
9 and whether we are taking a right away bothers me. I
10 don't think the Maryland National Guard except when the
11 Governor has called them out as the militia is the
12 militia. I think that is one of the hats they wear. But
13 when they are in training and in camp, I think they are
14 the Maryland National Guard, not the militia.

15 It seems to me before we vote on this maybe
16 we should consider adding something in here to the effect,
17 say, Line 3 after the word "militia" add "and other members
18 of the militia of this state." So that to clarify this so
19 that the National Guard or Maryland Guard will have the
20 right to court martial.

21 THE CHAIRMAN: Any further discussion? Are
you ready for the question? The question arises on the

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1 adoption of Amendment No. 8 as it has been amended. As so
2 amended the amendment on Page 1 of Committee Recommendation
3 No. GP-1 would strike out the last sentence and add
4 the sentence "A member of the militia may be subject to
5 trial by a military court of this state" -- sorry --
6 new sentence would read "Only a member of the militia may
7 be subject to trial by a military court of this state and
8 then only for offenses committed while the member is in
9 actual service." A vote Aye is a vote in favor of
10 the amendment. A vote No, a vote against the amendment
11 as the recommendation is drafted. Ready for the
12 question? All in favor, signify by saying Aye; contray,
13 No. The Noes seem to have it, but the Chair is in doubt
14 and calls for a roll call. A vote Aye is a vote in favor
15 of the amendment. A vote No, a vote against.

16 (WHEREUPON a roll call vote was taken.)

17 THE PRESIDENT: Does any delegate desire to
18 change his vote? The Clerk will record the vote. There
19 being 70 votes in the affirmative and 52 in the negative,
20 the motion is carried. The amendment as modified is
21 adopted. Are there any further amendments? Delegate



1 Schneider.

2 DELEGATE SCHNEIDER: Mr. President, it is my
3 understanding it is not yet a part of the rules to require
4 printed amendments. Is this correct?

5 THE CHAIRMAN: Yes, this is correct. The
6 Chair at any time can require an amendment to be in
7 writing as can any delegate.

8 DELEGATE SCHNEIDER: This being a very simple
9 amendment, I would hope that the Convention will indulge
10 me in making it orally.

11 THE CHAIRMAN: Before you do that, let me ask
12 if there are any other delegates who have already
13 prepared written amendments? If so, we can proceed to
14 consideration of those while your amendment is being
15 written. Would that satisfy you, Delegate Schneider?

16 DELEGATE SCHNEIDER: It is a very short
17 amendment and it is tacked on to Delegate Marion's
18 amendment and I think could be easily handled but if that
19 is the desire of the Chair --

20 THE CHAIRMAN: If you could write out the
21 amendment right now, we won't stop to print it but at

1 least let me have a written copy. The Chair recognizes
2 Delegate Storm.

3 DELEGATE STORM: I have an unnumbered amendment.

4 THE CHAIRMAN: Just a second. We will see if
5 we can get it for you. Chief Page.

6 DELEGATE STORM: This is an extremely modified
7 Fox amendment, you might say a modified Marion amendment.

8 THE CHAIRMAN: Just a second, Delegate Storm.
9 Is the amendment written, Delegate Storm?

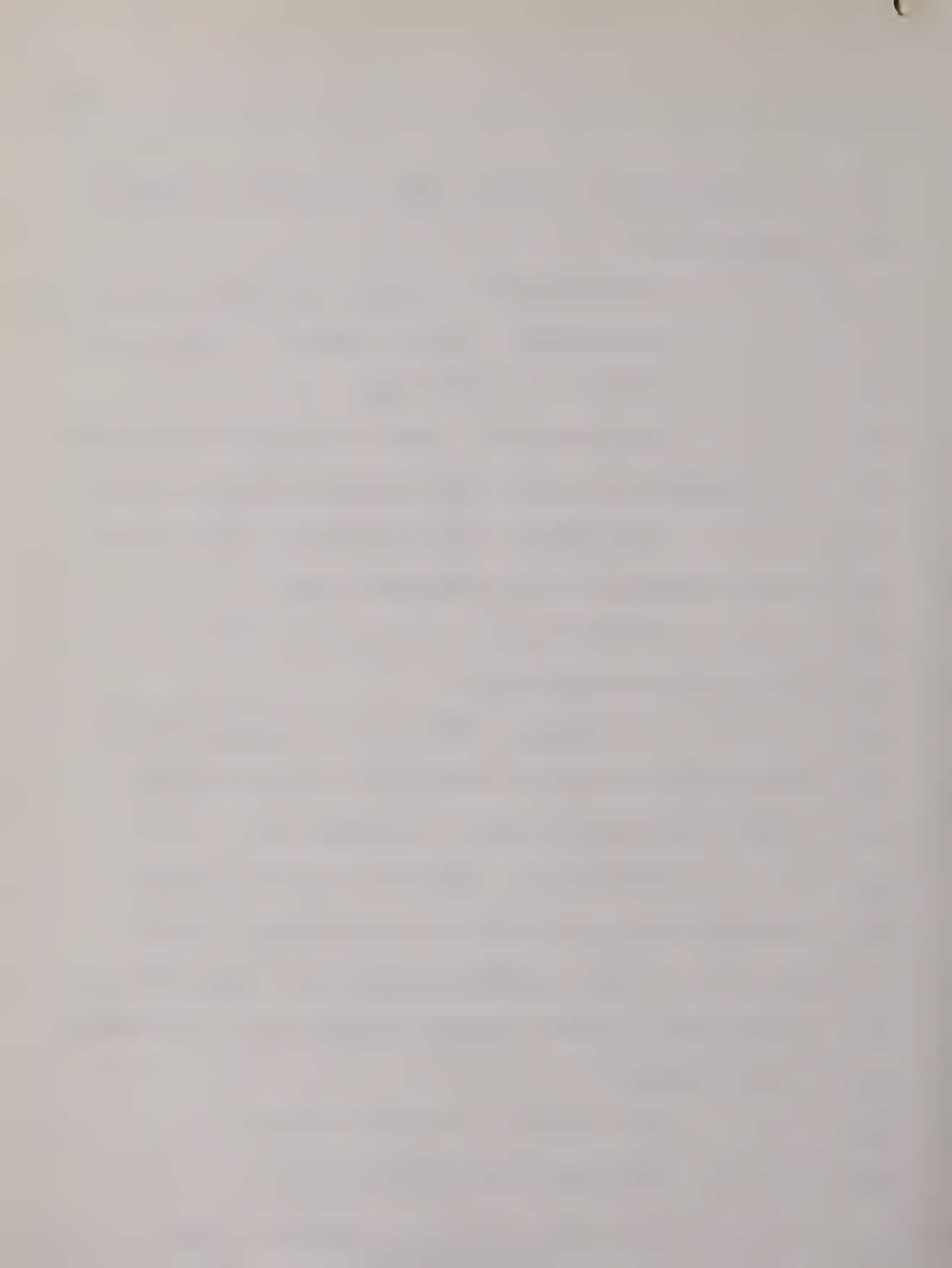
10 DELEGATE STORM: Yes, but I will wait until it
11 is more widely distributed.

12 THE CHAIRMAN: This will be Amendment No. 9.
13 Please mark your copy as Amendment No. 9 by Delegate
14 Storm. The Clerk will read the amendment.

15 MR. QUILLEN: Amendment No. 9 to Committee
16 Recommendation No. GP-1, by Delegate Storm. In Line 10
17 on Page 1 of Committee Recommendation No. GP-1, after the
18 word "chief," insert a period and strike out the remainder
19 of the sentence.

20 THE CHAIRMAN: Is there a second?

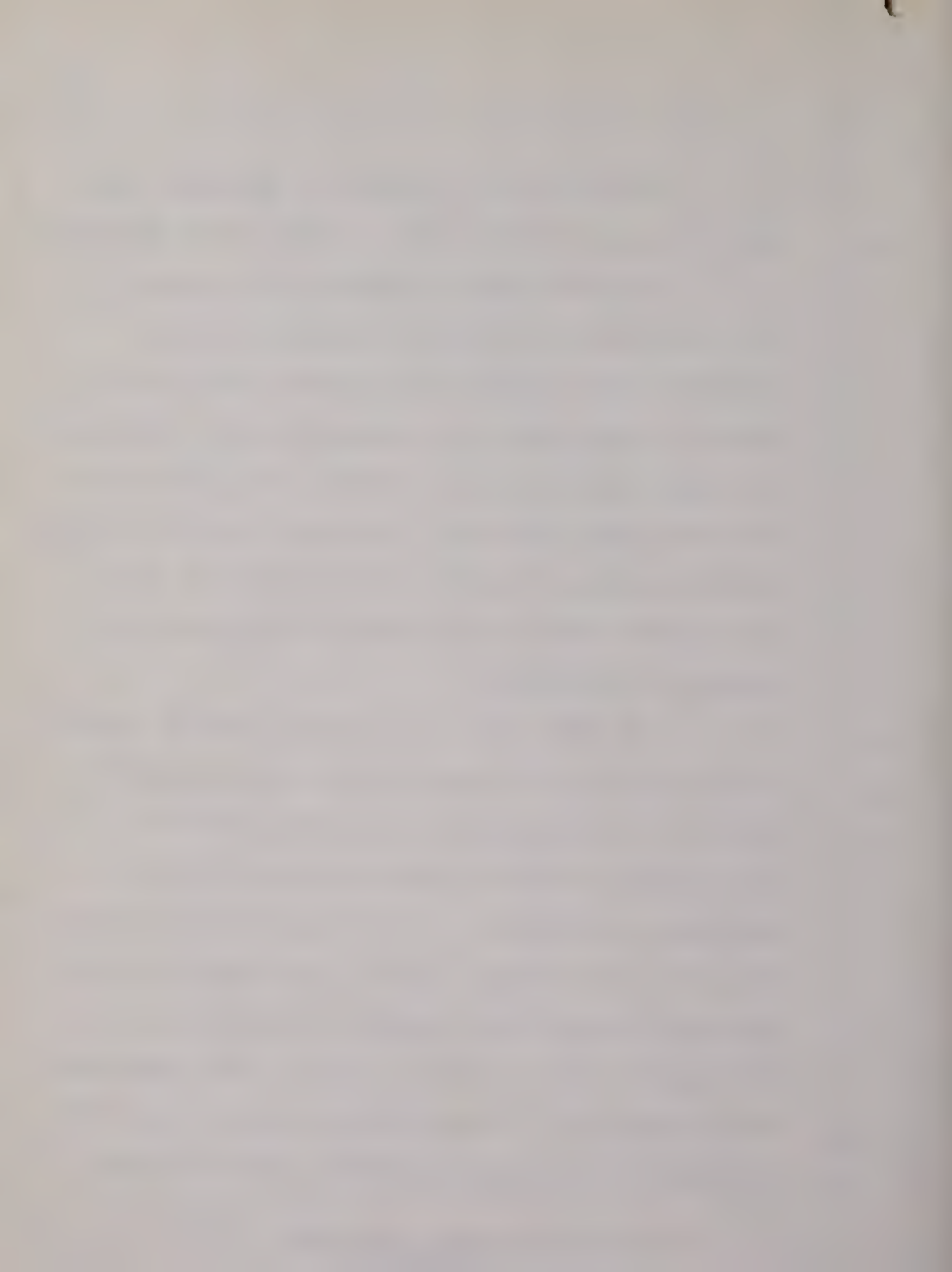
21 (The motion was duly seconded.)



1 THE CHAIRMAN: Amendment is seconded. The
2 Chair recognizes Delegate Storm to speak to the amendment.

3 DELEGATE STORM: Thank you, Mr. Chairman.
4 This approaches the problem which Delegate Marion
5 previously had recognized and it simply eliminates the
6 trouble we would have over providing that the commander-in-
7 chief shall appoint all its officers. It appears to me
8 this might bring difficulty. Does this mean commissioned,
9 noncommissioned, or just how far down should it go?
10 This amendment would simply allow the legislature to
11 provide for the details.

12 In other words, the Governor would be commander-
13 in-chief, would still have all other powers outlined in
14 the rest of the paragraphs but the only question or
15 only problem that would be involved would be on the
16 appointment of officers. I would suppose the legislature
17 would say that colonels, captains, lieutenants, would be
18 appointed by the Governor, commissioned officers, non-
19 commissioned officers could be chosen by the commissioned
20 officers and so on. These details, it seems to me, could
21 be worked out by the General Assembly better than this



1 Convention.

2 THE CHAIRMAN: Any further discussion? Delegate
3 Wheatley.

4 DELEGATE WHEATLEY: Point of parliamentary
5 inquiry, Mr.Chairman.

6 THE CHAIRMAN: You may proceed.

7 DELEGATE WHEATLEY: Is it the ruling of the
8 Chair that this matter has been dealt with in another
9 amendment or does he rule this is a different amendment?

10 THE CHAIRMAN: The Chair would rule this is
11 not the same amendment. It is related but not the same
12 amendment and is therefore proper.

13 DELEGATE WHEATLEY: In that case, I would like
14 to speak against the amendment.

15 THE CHAIRMAN: You may proceed.

16 DELEGATE WHEATLEY: For the same reasons stated,
17 I think it is incumbent upon us not to be vague and when
18 it comes to the important matter of who shall appoint
19 the officers of the militia, I think it is the prerogative
20 of the commander-in-chief to exercise authority and
21 leadership and therefore by striking out these words,

1 we are really abdicating our responsibility to determine
2 the person responsible for this. I suggest for the reasons
3 earlier stated the Governor should be responsible for the
4 appointment and therefore urge the defeat of the amendment.

5 THE CHAIRMAN: Any further discussion? Delegate
6 Weidemeyer.

7 DELEGATE WEIDEMEYER: I also rise in opposition
8 to the amendment. While it is not the same amendment, it
9 is not by the same sponsor, it looks like a good attempt to
10 give two bites at the same apple. We withdrew the
11 apple previously on the proposal or amendment by Delegate
12 Fox which would have accomplished the same as this
13 amendment. I think we determined the matter. Therefore,
14 I am opposed to this second attempt.

15 THE CHAIRMAN: Any further debate? Delegate
16 Storm.

17 DELEGATE STORM: A question of Mr. Wheatley or
18 Mr. Weidemeyer. Under the original proposal, how far
19 down the ladder would the Governor go? Would he appoint
20 warrant officers, staff sergeants, sergeants, private first
21 class, second class?

DELEGATE WHEATLEY: My interpretation in answer

1 to the question is exactly the word officers as it would
2 be defined by law. I would go all the way down to the
3 lowest officer, whatever that might be determined to be.
4 My understanding is in any determination Pfc's and
5 sergeants are not officers in the usual sense of the
6 word and therefore would not be included in the purview
7 of this word.

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1 THE CHAIRMAN: Delegate Storm.

2 DELEGATE STORM: I had understood that non-
3 commissioned officers were officers. We always classed
4 them that way in the Navy.

5 THE CHAIRMAN: Delegate Wheatley.

6 DELEGATE WHEATLEY: Being an Army man, I can't
7 speak for the Navy, but under the usual custom and usage
8 officers have never included PFC's, though I was one at
9 one time, and there is a clearcut distinction in my mind
10 between an officer and a person not an officer. I suggest
11 you would be in great difficulty with the Army if you did
12 not know which was which. (Laughter.)

13 THE CHAIRMAN: Any further discussion on Amend-
14 ment No. 9? Ready for the question? The question
15 arises on the adoption of Amendment No. 9 to the
16 Committee Recommendation GP-1. A vote Aye is a vote in
17 favor of the amendment. A vote No is a vote against the
18 amendment. Are you ready for the question?

19 All in favor, signify by saying Aye; contrary,
20 No. The Nos seem to have it. The Nos have it. The
21 motion is lost. The amendment is rejected.

The Chair recognizes Delegate Johnson.

1 DELEGATE JOHNSON: If it is in order, Mr.
2 Chairman, I would like to move for reconsideration of
3 the action taken by the Committee of the Whole on Amend-
4 ment No. 8 proposed by Delegate Marion.

5 THE CHAIRMAN: It is in order if the motion
6 is seconded. Is there a second to the motion to recon-
7 sider the vote by which Amendment No. 8 was adopted?

8 (The motion was duly seconded.)

9 THE CHAIRMAN: Seconded by Delegate Kirkland.
10 You may speak to the motion.

11 DELEGATE JOHNSON: Thank you very much, Mr.
12 Chairman.

13 What I am concerned about is, first of all,
14 there seems to be a very serious question whether or not
15 the militia includes the National Guard. I happen to
16 feel it does not. Apparently a majority of the Committee
17 of the Whole feel otherwise. But perhaps more important
18 inasmuch as the proposal before us carries with it a
19 permissive mandate to the General Assembly to create a
20 militia, I submit that if a militia is not created by
21 the General Assembly, that the action that we took with

1 Amendment No. 8 may and probably will preclude or at
2 least raise a serious Constitutional question whether or
3 not members of the National Guard, who certainly will
4 not be in the militia if we do not have a militia, who
5 are not members of the National Guard or other armed
6 forces in our State, can be tried by a military court.

7 I would like to see the Committee of the Whole
8 reconsider its action in light of the possibility
9 that we may not have a militia.

10 THE CHAIRMAN: Delegate Schneider.

11 DELEGATE SCHNEIDER: Mr. President, I would
12 ask Delegate Marion if he might withdraw his motion to
13 reconsider, because I have an amendment.

14 THE CHAIRMAN: You mean Delegate Johnson?

15 DELEGATE SCHNEIDER: Delegate Johnson,
16 if he would withdraw his motion to reconsider.

17 I have put forth, and it finally came out,
18 an amendment to Amendment No. 8, which would, I hope,
19 solve the problem he sees in it. This would be another
20 way of attacking the problem.

21 THE CHAIRMAN: If the motion to reconsider

1 carried, then Amendment No. 8 would be subject to further
2 amendment. You could offer your amendment at that time.

3 DELEGATE SCHNEIDER: I think it would be
4 anyway, wouldn't it?

5 THE CHAIRMAN: What did you say?

6 DELEGATE SCHNEIDER: Wouldn't --

7 THE CHAIRMAN: You would still be able to offer
8 your amendment.

9 Is there any further discussion on the
10 motion to reconsider?

11 The question arises on the motion to reconsider
12 the vote by which Amendment No. 8 was adopted. A vote Aye
13 is a vote to reconsider; a vote No is a vote against.
14 All in favor of the motion to reconsider, signify by saying
15 Aye; contrary, No. The Nos seem to have it. The Nos
16 have it. The motion is lost.

17 The Chair recognizes Delegate Schneider.

18 DELEGATE SCHNEIDER: Mr. Chairman, at this
19 time I would like to offer Amendment 1 to Amendment No.
20 8 which I hope has been distributed, which would, after
21 the word "militia" in Amendment No. 8, which has just

1 become part of our adopted section on the militia, after
2 the word "militia" in line 3 add the words "and other
3 members of the military of this State."

4 This I think would clarify that we are not --

5 THE CHAIRMAN: Just a second.

6 Is the amendment in writing?

7 DELEGATE SCHNEIDER: Yes, sir. I have a
8 copy of it.

9 THE CHAIRMAN: Just a second.

10 The Chair believes the motion is not in proper
11 form inasmuch as Amendment No. 8 has already been adopted
12 and that your amendment should be to amend Committee
13 Recommendation No. GP-1 as amended. May your motion be
14 restated in that form?

15 DELEGATE SCHNEIDER: This was originally the
16 way I had intended. I didn't intend originally an amend-
17 ment to the amendment, but for convenience sake I referred
18 to line 3 of Amendment No. 8, rather than spell out all the
19 language, and have something to refer to.

20 At this time I would move that we amend the
21 adopted section or the so-far amended section of

1 Committee Recommendation No. GP-1 such as after the word,
2 this is difficult because I don't know what line it is going
3 to be on when it comes out in print.

4 THE CHAIRMAN: May the Chair state the amend-
5 ment for you?

6 DELEGATE SCHNEIDER: Please do.

7 THE CHAIRMAN: I take it the amendment is
8 to amend Committee Recommendation GP-1 by inserting after
9 the word "militia" in the last sentence of the Recommenda-
10 tion as amended the words "and other members of the military
11 of this State."

12 Is that your amendment?

13 DELEGATE SCHNEIDER: Yes, sir; that is my
14 amendment.

15 But I am not wedded to the wording of this
16 amendment.

17 THE CHAIRMAN: Is the amendment seconded?

18 (The motion was duly seconded.)

19 THE CHAIRMAN: Who seconded it? Delegate
20 Hutchinson seconded it.

21 You may speak to the amendment.

1 DELEGATE SCHNEIDER: Though I am not wedded
2 to the wording of this amendment, it seems to me that
3 we better spell out clearly there we are not limiting
4 the power of court martial to the militia. I still do
5 not believe the militia necessarily incorporates
6 the Maryland National Guard, that the Maryland National
7 Guard in all facets is the militia, and the Maryland
8 National Guard in training time might be just the Maryland
9 National Guard and not militia, and are we to remove their
10 right to court martial?

11 THE CHAIRMAN: The Chair recognizes Delegate
12 Morgan.

13 DELEGATE MORGAN: Mr. Chairman, a parliamen-
14 tary inquiry. Isn't the effect of this amendment to amend
15 an amendment that has already been agreed to?

16 THE CHAIRMAN: The point of order is well
17 taken, but the Chair incorrectly advised Delegate Schneider
18 in telling him that the motion that he wanted to make
19 could be made either after the motion to reconsider had
20 carried or at this time.

21 If the point of order were pressed, I would

1 have to rule in your favor, but I think it would be un-
2 fair to Delegate Schneider.

3 Delegate Henderson.

4 DELEGATE HENDERSON: Mr. Chairman, might I
5 raise another point of parliamentary procedure? Since
6 the whole subject matter of this article which is under
7 consideration deals with the militia, is it in order to
8 undertake to legislate or deal with other subject matter?
9 In other words, is it germane to the subject under discus-
10 sion?

11 THE CHAIRMAN: I take it that your question
12 is whether the phrase "other members of the military of
13 this State" refers to militia. The Chair is not clear
14 what is meant by the phrase "other members of the military
15 of this State."

16 I would say that the only military of this State
17 could be the militia. I would therefore rule the amendment
18 germane.

19 Any further discussion?

20 Delegate Wheatley.

21 DELEGATE WHEATLEY: Mr. Chairman, I am still

1 somewhat confused. I agree with the principle here.
2 In fact, I planned to second this original motion to
3 amend. However, it would seem to me if we say "other
4 members of the military of this State" as Judge Henderson
5 suggests, are we then suggesting that there is another
6 class of military that the Governor might not be in con-
7 trol of?

8 I raise this question to the sponsor because
9 I again am in sympathy with his desire to clarify. I
10 hope we are not confusing by this attempt to clarify.

11 THE CHAIRMAN: Delegate Schneider, do you
12 yield for the question?

13 DELEGATE SCHNEIDER: Yes.

14 It seems to me at times you could call in
15 part of the National Guard, the Governor could call part
16 of the National Guard, send them perhaps to some part
17 of the State to solve some sort of problem without calling
18 the whole Maryland National Guard in, so at that time
19 you would have two different militaries, as such. The
20 militia seems to me to be one phase of Maryland National
21 Guard and I think Maryland National Guard is bigger than

1 the militia. It has its phase of being the Maryland
2 National Guard and has its phase of becoming militia.
3 I don't see the problem that Delegate Wheatley sees.

4 THE CHAIRMAN: In ruling a moment ago that the
5 amendment was germane the Chair proceeded upon the assump-
6 tion that military of this State would mean only a military
7 exercising under and by force of the laws of this State,
8 and therefore would not embrace any National Guard ex-
9 cept to the extent the National Guard was covered under
10 the laws of this State.

11 If your amendment means other than that, I
12 would rule it not germane.

13 DELEGATE SCHNEIDER: Perhaps I am not quite
14 sure of what the Maryland National Guard is. I thought
15 it was a Maryland force of the military. If it is a
16 Federal force we would not have a problem here at all,
17 but I thought it was a Maryland force, and it is, as
18 I understand it, established under the laws of the
19 State of Maryland, is it not?

20 THE CHAIRMAN: The Chair will recognize Dele-
21 gate E. J. Clarke, Chairman of the Subcommittee on the
Militia, for the hopeful purpose of further clarification.

1 DELEGATE CLARKE: Mr. Chairman, ladies and
2 gentlemen of the Committee, if you refer to the Commission
3 Report, first on page 375, then back to page 281, the
4 National Guard or the Army National Guard of Maryland is
5 not constituted in Article 9, section 1 or 2 of the present
6 Constitution. Back on page 281 we have the section on
7 militia and a commentary; there is no reference there
8 either to the Maryland National Guard.

9 Whether the General Assembly has provided
10 that the National Guard is or may be part of the militia
11 I am not clear on at this time.

12 THE CHAIRMAN: Any further discussion?

13 Delegate Wheatley.

14 DELEGATE WHEATLEY: Mr. Chairman, in light
15 of the confusion that exists, so that we might not act
16 without full knowledge of the intent of this, I again
17 state, I state again I think this is probably the most
18 difficult part of the entire section. I would like to
19 know if I would be in order to make this a special order
20 of business for tomorrow at the appropriate hour.

21 THE CHAIRMAN: No. The only motion I think

1 would be proper would be a motion for the Committee to
2 rise and report to the Convention that it has Committee
3 Recommendation No. GP-1 under consideration, and request
4 the Convention to make it an order of special business for
5 tomorrow.

6 DELEGATE WHEATLEY: Mr. Chairman, in light of
7 the apparent confusion by those who desire to accomplish
8 apparently the same result, I would so move.

9 THE CHAIRMAN: Is there a second to the motion?

10 (The motion was duly seconded.)

11 THE CHAIRMAN: The Chair would like to inquire
12 before putting this motion whether there are any other
13 amendments already prepared which Delegates would intend
14 to offer, irrespective of the present amendment?

15 The Chair recognizes Delegate Singer.

16 DELEGATE SINGER: Mr. Chairman, there is Amend-
17 ment No. 12 that has been prepared and not distributed.

18 THE CHAIRMAN: Are there any other amendments?
19 Delegate Gallagher, do you have another amend-
20 ment?

21 DELEGATE GALLAGHER: I do, Mr. Chairman.

1 I have Amendment 14. It is written and is in the hands
2 of the chief of the pages.

3 THE CHAIRMAN: Are there any other amendments?
4 Delegate Barrick.

5 DELEGATE BARRICK: I have Amendment No. 13.

6 THE CHAIRMAN: May the Chair suggest then
7 in the interest of continuing discussion on matters
8 that we can consider that Delegate Wheatley withdraw his
9 motion at the present time, and Delegate Schneider agree
10 to postpone further consideration of his amendment until
11 later in this session?

12 DELEGATE WHEATLEY: I so withdraw my motion.

13 DELEGATE SCHNEIDER: I so agree.

14 THE CHAIRMAN: Delegate Schneider, so that
15 the journal may be clear, would you withdraw your amend-
16 ment upon the Chair's assurance that you will have an
17 opportunity to submit it again?

18 DELEGATE SCHNEIDER: Mr. Chairman, I withdraw
19 this amendment, reserving the right to place it again
20 at a later time.

21 THE CHAIRMAN: All right. Amendment No. 8

1 is withdrawn. It will retain its number. It will
2 be considered again.

3 Are there any others?

4 Delegate Barrick.

5 DELEGATE BARRICK: I would like, Mr. Chairman,
6 to propose Amendment No. 13 which has been printed but
7 not distributed.

8 THE CHAIRMAN: Let's see if we can get copies.
9 Let me correct the record. I referred in the previous
10 statement to Amendment No. 8. This was not Delegate
11 Schneider's amendment. Amendment No. 8 is not withdrawn.

12 DELEGATE SCHNEIDER: It is 10.

13 THE CHAIRMAN: Delegate Schneider's amendment
14 would be number 10.

15 DELEGATE BARRICK: This would be 11.

16 THE CHAIRMAN: Number 10.

17 The Chair recognizes Delegate Barrick.

18 DELEGATE BARRICK: Mr. Chairman, this would
19 actually be Amendment No. 11, but it is numbered 13.

20 THE CHAIRMAN: Which was number 11? Yours?

21 DELEGATE BARRICK: Mine will be number 11,

1 now number 13.

2 THE CHAIRMAN: One that has been circulated
3 as number 13 is amendment 11. The Clerk will read the
4 amendment.

5 MR. QUILLEN: Amendment No. 11 to Committee
6 Recommendation No. GP-1, by Delegate Barrick: In line
7 15 on page 1 of Committee Recommendation No. GP-1 after
8 the word "occur" insert "or has occurred."

9 THE CHAIRMAN: Is there a second?

10 (The motion was duly seconded.)

11 THE CHAIRMAN: The amendment is seconded.
12 The Chair recognizes Delegate Barrick to speak to the
13 amendment.

14 DELEGATE BARRICK: Mr. Chairman, the only pur-
15 pose of this amendment is to take care of a situation
16 where great destruction of life or property has occurred
17 and he may wish to call in the militia to take care of the
18 situation after the occurrence. As I read the proposal
19 it takes care of the situation when it may occur, and
20 this would take care of it after it has occurred. I think
21 it is rather self-explanatory and should require very

1 little debate.

2 THE CHAIRMAN: Is there any further discussion?
3 Delegate Gallagher.

4 DELEGATE GALLAGHER: Mr. President, would
5 the sponsor consider an additional substitute by way
6 of further amendment, and that in reality is what I
7 planned to offer. My suggestion would be if he would
8 consider it that the words "may occur" be struck out
9 and that in lieu thereof the words "threatened or may have
10 occurred" be inserted.

11 THE CHAIRMAN: Delegate Barrick.

12 DELEGATE BARRICK: I think that accomplishes the
13 same purpose I wish to accomplish. I would accept that.
14 It is probably a little better language.

15 THE CHAIRMAN: Does the seconder accept the
16 modification? The modification is instead of inserting
17 the words "or has occurred" in place of the word "occur,"
18 insert the words "is threatened or may have occurred."
19 Please mark your copy.

20 DELEGATE GALLAGHER: Mr. President.

21 THE CHAIRMAN: Delegate Gallagher.

1 DELEGATE GALLAGHER: Mr. President, the
2 exact text of this change is contained in Amendment No.
3 14, if it could be distributed. It would be the actual
4 language.

5 THE CHAIRMAN: Would you please distribute the
6 amendment marked No. 14?

1 THE CHAIRMAN: Delegate Barrick, do you have
2 a copy of the new number 14?

3 DELEGATE BARRICK: Yes, I do.

4 THE CHAIRMAN: Would you be willing to substitute
5 that language, withdraw your amendment and substitute
6 that language?

7 DELEGATE BARRICK: Yes, I would.

8 THE CHAIRMAN: Amendment No. 11 is -- is the
9 seconder satisfied?

10 DELEGATE BAMBERGER: Yes.

11 THE CHAIRMAN: Amendment marked No. 11 is with-
12 drawn. Please substitute in place of it Amendment No. 14,
13 change the number to 11. It is offered by Delegate Barrick
14 and amended by Delegate Gallagher. So the record may
15 be clear, I ask the Clerk to read the amendment.

16 MR. QUILLEN: Amendment No. 11 substituted
17 by 14 to Committee Recommendation No. GP-1, by Delegate
18 Gallagher: In line 15 on page 1 of Committee Recommenda-
19 tion GP-1, strike out the words "may occur" and insert
20 in lieu thereof "is threatened or may have occurred."

21 THE CHAIRMAN: The Chair recognizes Delegate

1 Barrick. Do you desire to speak further to the amendment?

2 DELEGATE BARRICK: Mr. Chairman, I think it
3 is pretty well self-explanatory. Just a matter of
4 trying to take care of a situation after the great damage
5 to property or life has occurred where you may want to
6 call in the militia to take care of a clean-up sort of
7 deal.

8 THE CHAIRMAN: Delegate Harry Taylor had sought
9 recognition. Does he still desire to be recognized?

10 DELEGATE HARRY TAYLOR: Mr. Chairman, I thought
11 we had some free time. I had a parliamentary inquiry
12 that can wait for a more appropriate time.

13 THE CHAIRMAN: Delegate Gallagher.

14 DELEGATE GALLAGHER: Mr. Chairman, I used
15 the words "is threatened" rather than "may occur" because
16 I thought it was a happier meeting place for between "may
17 occur" and "is imminent," which we discussed earlier today.
18 I felt that the "is threatened" perhaps more accurately
19 conveyed what the sense of the Committee of the Whole
20 might be with respect to the question of "when great
21 destruction of life or property is involved."

1 Then recognizing the same difficulty which
2 Delegate Barick recognized, that there was no after-the-
3 fact power conferred upon the Governor with respect to
4 this fourth category to allow him explicitly to use the
5 militia, it was the intention of the amendment to take
6 care of both the pre-happening and the post-happening of
7 the great damage to life and property. So the purpose,
8 therefore, is to take care of both situations, one before
9 the fact, one after the fact.

10 THE CHAIRMAN: Any further discussion?

11 Delegate Hardwicke.

12 DELEGATE HARDWICKE: Will Delegate Gallagher
13 yield for a question?

14 DELEGATE GALLAGHER: Yes.

15 DELEGATE HARDWICKE: Is your language "may
16 have occurred," is that intended to be indefinite or did
17 you not really mean to say "is threatened" or "has occurred"?

18 THE CHAIRMAN: Delegate Gallagher.

19 DELEGATE GALLAGHER: I think it is a question
20 of the use of the language. My intention is to allow the
21 Governor to act after the occurrence.

1 DELEGATE HARDWICKE: Will the Delegate yield
2 for a further question? Would you not accept an amend-
3 ment to say "is threatened" or "has occurred."

4 THE CHAIRMAN: Delegate Gallagher.

5 DELEGATE GALLAGHER: I don't want to hang up
6 in word surgery here, but it would seem to me, if I read
7 the sentence, "The Governor may order the militia to
8 active duty to repel invasions, suppress insurrection,
9 enforce execution of laws and provide assistance when
10 great destruction of life or property is threatened or
11 may have occurred" is a happier combination of the tenses
12 in the verbs.

13 That is subject to argument among literary
14 purists, and I will yield to any literary purists, including
15 the Style Committee, on the question.

16 THE CHAIRMAN: Delegate Hardwicke.

17 DELEGATE HARDWICKE: May I speak on the
18 amendment?

19 THE CHAIRMAN: You may.

20 DELEGATE HARDWICKE: It appears to me if we
21 leave this "may have occurred" the Governor would have

1 discretion as to whether or not the destruction has
2 occurred. It seems to me the better language would be to
3 permit the Governor to act only if the destruction has in
4 fact occurred, and not where there is any uncertainty as
5 to whether or not it has occurred.

6 THE CHAIRMAN: Delegate Gallagher, in view
7 of the comments do you stand on your language?

8 DELEGATE GALLAGHER: Mr. Chairman, I do not
9 stand on the language. I think the same object can be
10 accomplished both in Mr. Hardwicke's verb and my
11 verb. I am happy to give him the benefit of the verb.

12 THE CHAIRMAN: Will the seconder accept the
13 modification to strike the words "may have" in line four
14 and substitute the word "have"?

15 DELEGATE BARRICK: Yes, I accept it. That
16 was my original wording.

17 THE CHAIRMAN: The motion as modified, the
18 words "may have" in line four are stricken and the
19 word "have" is inserted.

20 Is there any further discussion? Are you ready
21 for the question?

1 The question arises on Amendment No. 11 to
2 Committee Recommendation GP-1: In line 15 on page 1
3 of the Committee Recommendation strike out the words "may
4 occur" and in lieu thereof insert the words "is threatened
5 or has occurred."

6 A vote Aye is a vote in favor of the amendment.
7 A vote No is a vote against the amendment. Ready for the
8 question? All in favor, signify by saying Aye; contrary,
9 No.

10 The Ayes have it; it is so ordered.

11 Delegate Singer.

12 DELEGATE SINGER: Mr. Chairman, I have Amend-
13 ment No. 12.

14 THE CHAIRMAN: The Clerk will read the Amend-
15 ment.

16 MR. QUILLEN: Amendment No. 12 to Committee
17 Recommendation No. GP-1, by Delegate Singer: In line
18 12 on page 1 of the Committee Recommendation No. GP-1
19 strike out "repel. invasions."

20 THE CHAIRMAN: Is there a second?

21 (The motion was duly seconded.)

1 THE CHAIRMAN: The Chair recognizes Delegate
2 Singer to speak to the motion.

3 DELEGATE SINGER: Mr. Chairman, very briefly, I
4 believe that the phrase in question is very little relevant
5 to the present day. The section will not suffer at all
6 by the deletion of the phrase, and that it would be im-
7 proved in that it suggests something not relevant today.

8 THE CHAIRMAN: Any further discussion?
9 Ready for the question?

10 The question arises on the adoption of Amend-
11 ment No. 12 to Committee Recommendation No. GP-1. A
12 vote Aye is a vote in favor of the amendment to strike
13 the words "repel invasions" from line 12. A vote No
14 is a vote against the Amendment. Are you ready for the
15 question?

16 All in favor, signify by saying Aye; contrary,
17 No. The Nos seem to have it. The Nos have it. It is
18 so ordered. The Amendment fails.

19 Are there any further amendments?

20 I assume, Delegate Wheatley, you rise for
21 the same purpose?

1 DELEGATE WHEATLEY: Yes.

2 THE CHAIRMAN: Before recognizing you, I want
3 to make sure there are no other amendments which have
4 been prepared and desire to be offered. If not,
5 then in keeping with the promise to Delegate Schneider,
6 I wish first to give him the opportunity to resubmit
7 Amendment 10, after which the Chair will recognize Delegate
8 Wheatley.

9 DELEGATE SCHNEIDER: Mr. Chairman, I resubmit
10 Amendment No. 10.

11 THE CHAIRMAN: Is it seconded?

12 (The motion was duly seconded.)

13 THE CHAIRMAN: Amendment No. 10 to Committee
14 Recommendation GP-1 is now before you.. The Chair recognizes
15 Delegate Wheatley.

16 DELEGATE WHEATLEY: Mr. Chairman, I move
17 that the Committee rise and report back to the Convention
18 that the consideration of GP-1 Recommendation has not
19 been completed, and further recommend that consideration
20 of GP-1 be made a special order of business of the Conven-
21 tion at a later date.

1 THE CHAIRMAN: The Convention, or this
2 Committee?

3 DELEGATE WHEATLEY: This Committee.

4 THE CHAIRMAN: Is there a second.

5 (The motion was duly seconded.)

6 THE CHAIRMAN: The Chair recognizes Delegate
7 Henderson.

8 DELEGATE HENDERSON: Mr. Chairman, it seems
9 to me if I understand the matter correctly that we are
10 postponing action on this merely to take care of a supposed
11 question as to what happens to the National Guard in the
12 event they are not brought within the scope of the term
13 militia.

14 This whole debate has concerned the militia.
15 If the National Guard is a member of the militia it is
16 covered by the present language. If it is not, I suggest
17 that it is a matter which is dealt with separately by
18 the Legislature, and as to which the Legislature can provide
19 its own rules. I see no occasion to delay the action of
20 this Convention and require further consideration of a
21 matter which seems to me to be outside the scope of our

1 present discussion. I would therefore oppose the postpone-
2 ment of our action, final action today.

3 THE CHAIRMAN: The Chair recognizes Delegate
4 Carson.

5 DELEGATE CARSON: Mr. Chairman, I would like
6 to speak against the motion and all I would like to do
7 in speaking is to read from section 5 of Article 65 of the
8 Maryland Code.

9 "The militia of this State shall be divided
10 into two classes, the organized militia and the unorganized
11 militia. The organized militia of the State shall con-
12 sist of officers appointed and commissioned by the Governor
13 and of such able bodied male citizens of this State and
14 such able bodied males of foreign birth as have declared
15 their intentions to become citizens of the State, resident
16 therein, as shall be regularly enlisted therein, including
17 the National Guard, the State Guard, and the Reserve Militia
18 (Minutemen)."

19 This makes it very clear that the National
20 Guard is part of the militia.

21 THE CHAIRMAN: Is there any further discussion?

1 Delegate Pullen.

2 DELEGATE PULLEN: Mr. Chairman, I find myself
3 in great confusion. The same seems to be true with
4 others. I cannot understand why we go to a great deal
5 of trouble to provide that the Governor shall be the
6 Commander in Chief, shall appoint its officers, that he
7 may order out the militia, and spell out certain other
8 things for something that may never happen because we
9 may not have a militia.

10 It seems to me that if we are going to write
11 anything, here I think Delegate Fox was right, that prob-
12 ably two lines are sufficient. I feel, therefore, that
13 we have accomplished one purpose this afternoon. We know
14 more about this than we did before. I therefore suggest,
15 sir, that we approve the recommendation or the motion of
16 Mr. Wheatley so that we can come back and make up our
17 minds definitely whether we want a militia or not, and
18 settle it on that one point.

19 THE CHAIRMAN: Delegate Wheatley.

20 DELEGATE WHEATLEY: Mr. Chairman, I originally
21 stated the proposition that it was the understanding of
the Committee in its action that the National Guard

1 was the organized militia, as stated by Delegate Carson.
2 The purpose in making my motion was to allay the fears
3 of some that this is not the case. I certainly would
4 have no objection to voting on this at this time, if this
5 is the intention of the Committee, that this is the
6 meaning of the words themselves.

7 I again would ask the question, if I might, of
8 Delegate Schneider, if he is agreeable.

9 THE CHAIRMAN: Will Delegate Schneider yield
10 for a question?

11 DELEGATE SCHNEIDER: Yes.

12 DELEGATE WHEATLEY: Delegate Schneider, are you
13 agreeable that this is the interpretation to be given
14 to the word "militia"?

15 DELEGATE SCHNEIDER: I would just have to take
16 it on faith. I see the militia and the Maryland National
17 Guard as sort of like the Committee of the Whole and the
18 Convention. It is the same people, but it is two
19 different functions, and maybe it is different. We sit
20 with two different hats here and report back to each other.
21 It seems to me maybe Maryland's National Guard and militia

1 are like that, and until I could feel certain that
2 they are not and that the Maryland National Guard was
3 always part of the militia, full time all the year around
4 while they are in the Maryland National Guard, I would be
5 afraid to vote for the proposal or the Recommendation
6 of the Committee.

7 THE CHAIRMAN: The Chair recognizes Delegate
8 Powers.

9 DELEGATE POWERS: Mr. Chairman, we have spent
10 several hours on debate and are nearing the completion of
11 the first Committee Recommendation. As far as the Commit-
12 tee on Calendar and Agenda is concerned, we would hope
13 that we could conclude this consideration this afternoon
14 and go on with other things as the Convention progresses.
15 I hope the motion would fail and that we can dispose of
16 now the remaining amendments to the Recommendation.

17 THE CHAIRMAN: The Chair recognizes Delegate
18 Wheatley.

19 DELEGATE WHEATLEY: Mr. Chairman, I would be
20 happy to withdraw my motion, since I, too, would like to
21 act on it.

1 THE CHAIRMAN: Does the seconder agree to
2 withdrawal of the motion to rise?

3 Delegate Schneider, do you agree to withdraw?

4 DELEGATE SCHNEIDER: Yes, Mr. Chairman, I will
5 withdraw amendment -- whatever the number of my amendment
6 is.

7 THE CHAIRMAN: Just a second.

8 The motion that the Committee rise and report
9 has been withdrawn by the mover and seconder.

10 The Chair now recognizes Delegate Schneider
11 to move to withdraw Amendment No. 10.

12 DELEGATE SCHNEIDER: I will withdraw at this
13 time Amendment No. 10; if the Convention feels fairly cer-
14 tain they understand what the militia is and it is pro-
15 tected here, I would be very happy to withdraw it.

16 THE CHAIRMAN: Does the seconder join in with-
17 drawal?

18 DELEGATE WHEATLEY: I withdraw my second, Mr.
19 Chairman.

20 THE CHAIRMAN: For what purpose does Delegate
21 Weidemeyer rise?

1 DELEGATE WEIDEMEYER: To suggest Delegate
2 Schneider ask the Convention that probably all his fears
3 could be allayed by the General Provisions Committee in
4 writing up carryover provisions of our present Articles
5 of the Code defining what the militia is.

6 THE CHAIRMAN: Are there any further amendments?
7 If not, the question before the Committee of the Whole
8 is the Committee Recommendation No. GP-1 as amended. Is there
9 any discussion?

10 Delegate Hardwicke.

11 DELEGATE HARDWICKE: I would like to speak
12 against it.

13 THE CHAIRMAN: Let me state the question.
14 The question arises on the approval of Committee Recommenda-
15 tion GP-1 by the Committee of the Whole, approval of the
16 Recommendation as amended.

17 The Chair now recognizes Delegate Hardwicke.

18 DELEGATE HARDWICKE: Mr. Chairman, I believe
19 that the debate on this subject has demonstrated that
20 it is more in the nature of a statutory matter. The
21 testimony of the Chairman of the Committee indicated that

1 if this Convention believed it to be the case that the
2 legislature could in fact do this by statute. I believe
3 that GP-1 is not the timeliest kind of concept which is
4 going to survive in all of the detailed language set forth
5 therein over the period of two or three generations.
6 I suspect that this is the kind of provision that is going
7 to be back before the voters and people of Maryland on
8 Constitutional amendments from time to time, which we
9 as members of this Constitutional Convention have sought
10 to block.

11 In other words, in meeting here we are seeking
12 to get rid of statutory type details. We are seeking to
13 prevent the continued submission of language to people
14 of the State of Maryland. Since the Legislature can ade-
15 quately cope with the problem of the militia by statute
16 it seems to me this is not of Constitutional stature
17 or place or dignity. I urge that it be omitted altogether
18 from this Constitution.

19 THE CHAIRMAN: Is there any further discussion?

20 The question arises on the approval by the
21 Committee of the Whole of Committee Recommendation GP-1

1 as amended. A vote Aye is a vote in favor of the approval
2 of the Recommendation as amended. A vote No is against.
3 Are you ready for the question?

4 All in favor, signify by saying Aye; contrary,
5 no. The Ayes seem to have it. The Ayes have it.
6 The motion is carried. Committee Recommendation No. GP-1
7 is approved.

8 The Chair now recognizes Delegate Powers for
9 the purpose of making a motion that the Committee rise
10 and report.

11 DELEGATE POWERS: Mr. Chairman, I move the
12 Committee of the Whole rise and report to the Convention
13 on Committee Recommendation No. GP-1 with the amendments
14 agreed to.

15 THE CHAIRMAN: Is there a second?

16 (The motion was duly seconded.)

17 THE CHAIRMAN: Is there any discussion?
18 Ready for the question?

19 The question arises on the motion that the
20 Committee of the Whole rise and report to the Convention
21 that it has considered Committee Recommendation No. GP-1

1 and reports the same favorably with amendments.

2 All in favor, signify by saying Aye; contrary, No. The
3 Ayes have it. It is so ordered.

4 (Whereupon, at 5:26 p.m. the Committee of the
5 Whole rose, and the Convention reconvened.)

6 THE PRESIDENT: The Committee of the Whole
7 rises. The Convention will please come to order.

8 The Chairman of the Committee of the Whole
9 reports to the Convention that the Committee of the Whole
10 has had under consideration Committee Recommendation
11 No. GP-1. It has approved Committee Recommendation No.
12 GP-1 with amendments and so reports to the Convention.
13 In accordance with the Rules of the Convention, the
14 Committee Recommendation No. GP-1 with amendments is
15 referred to the Committee on Style, Drafting, and Arrange-
16 ment.

17 I have to pause just a moment. The debate
18 has been sufficient to run out one whole tape.

19 The Convention will please come to order.

20 In the unusual flurry of activity the Chair
21 omitted before the Conention resolved itself into the

1 Committee of the Whole to receive formally across the desk
2 the Minority Report No. GP-1. In order that the journal
3 may be accurate and complete, I will ask the Clerk now to
4 read Minority Report GP-1.

5 MR. QUILLEN: Minority Report No. GP-1, by
6 Delegates Pullen, Kirkland, Caldwell, Sosnowski, Blair,
7 Vecera, Kathleen Robie, Wheatley and Key: A Minority
8 Report concerning the militia.

9 DELEGATE SHERBOW: Mr. President.

10 THE PRESIDENT: The Chair recognizes Delegate
11 Sherbow.

12 DELEGATE SHERBOW: I was going to move that
13 so much as we have heard of the reading be considered
14 reading of the whole.

15 THE PRESIDENT: It is completed. It is
16 received.

17 Delegate L. Taylor.

18 DELEGATE L. TAYLOR: Today for the first time
19 we had a Minority Report signed by a majority of a
20 Committee. It is conceivable from my observations we
21 may later in this Convention get a Minority Report that

1 will be signed by all the members of a Committee. It is
2 a little confusing, and I think for the sake of parlia-
3 mentary clarity it would be better to develop a different
4 nomenclature for these reports. I would suggest the
5 Majority Report, and then secondly the Majority Report
6 that has the majority votes of the Committee, rather than
7 calling it the Minority Report which has the majority
8 support a Minority Report. (Applause.)

9 THE PRESIDENT: I am not sure if that is a parlia-
10 mentary inquiry or a statement of confusion. Let me say
11 that the situation that arose today was indeed confusing,
12 but not quite so confusing as it would be if we changed as
13 suggested.

14 The Committee Recommendation which is referred
15 to loosely as the Majority Report is not properly designated
16 a Majority Report. It is a Committee Recommendation.
17 When it is filed it is circulated to the Delegates, and
18 under the rules, of course, lays over for at least three
19 days.

20 I think while it may be confusing, if we retain
21 the present nomenclature and refer to that constantly as

1 the Committee Recommendation, even though it may at the
2 time of debate no longer have the support of the majority
3 of the Committee, we wouldn't have any confusion.

4 I have a few announcements that I want to
5 make. I had intended to announce that we had in the
6 gallery several distinguished visitors: Mr. June Haw
7 and Mr. Young-gun Hwang, who are members of the staff of
8 the Korean National Assembly. They seem to have decided
9 that a session such as we have had is more than Korean
10 endurance could bear and they have departed. We are very,
11 very happy to have them. I am sure that their departure
12 was because of other engagements.

13 I would like also to announce that the flowers
14 on the rostrum today are there through the courtesy of
15 Delegate Dorothy Murray, and thank her for them.

16 Delegate Murray.

17 DELEGATE DOROTHY MURRAY: Thank you, Mr.
18 President. In lieu of the many words which I anticipate
19 being spoken in this Assembly, with your permission
20 and that of the Delegates, I would like to be able to
21 bring flowers whenever I can, and please don't mention

1 them again.

2 THE PRESIDENT: The Chair, speaking for the
3 Convention, says simply thank you. (Applause.)

4 I understand that between 75 and 100 Delegates
5 saw the movie at the conclusion of the session of the
6 Convention yesterday. I take it therefore that all Delegates
7 who desire to see it have seen it. There will be other
8 showings of the movie from time to time. You are welcome
9 to see it. No other showings are scheduled particularly
10 for Convention Delegates.

11 I cannot refrain at this moment from one other
12 announcement, and that is to say to the Convention Delegates
13 in their capacity as members of the Committee of the
14 Whole a very sincere thank you for a well ordered debate
15 in which you bore with your presiding officer's slips
16 with very good grace.

17 Are there any announcements by Committee Chair-
18 men?

19 Delegate Kiefer.

20 DELEGATE KIEFER: Mr. President, the Committee
21 on Personal Rights and the Preamble has what I think is a

1 happy announcement, one I make with a great deal of satis-
2 faction.

3 After about two days of hearings extending over
4 some days and after at least a good day of debate and
5 discussion, this Committee adopted by a vote of 16 to
6 1 the following language, subject to some perhaps polishing
7 up, to recommend to this Convention at a later time to
8 replace the language of 103 with the following language:
9 "No law shall be enacted respecting an establishment of
10 religion or prohibiting the free exercise thereof."

11 This is the Committee's opinion as to what
12 the First Amendment of the United States Constitution is.
13 I make this announcement for two reasons. There has been
14 a great deal of interest by a great many Delegates. I
15 think in view of the debate as carried on today, it is rather
16 significant that this very highly inflammable subject was
17 enacted by this Committee in a vote of 16 to 1. We had
18 hoped to go for due process this afternoon, but obviously
19 we are not going to do that. In fact, if we tried to re-
20 assemble before 7:30, I am sure nobody would come.
21 We will reassemble at 9:30 to consider the Preamble and

1 perhaps move on to some other matters.

2 THE PRESIDENT: Delegate Sherbow.

3 DELEGATE SHERBOW: The Committee on Finance
4 and Taxation will meet tomorrow morning at ten o'clock to
5 hear Mr. John Lauber of the Governor's Task Force, to
6 consider a series of recommendations sent to our Committee
7 by the Governor.

8 After the session tomorrow afternoon, we will
9 meet with the President of the Senate, Speaker of the
10 House, and other legislative leaders for further discussion
11 on the same subject.

12 I would like specifically now to invite Dele-
13 gate Beatrice Miller and Delegate Sosnowski to appear
14 at either of these two meetings tomorrow to discuss their
15 proposal 351 which in part is involved in some of these
16 recommendations. I am sorry that they had not been over
17 before before our Committee. Apparently this was an over-
18 sight.

19 THE PRESIDENT: Any further announcements?

20 Delegate Mudd.

21 DELEGATE MUDD: Mr. President, the Committee
on the Judicial Branch was scheduled to have heard this

1 afternoon Delegates Finch and Grant regarding their
2 proposals 417 and 441 referred to this Committee. Be-
3 cause a subcommittee of the Judicial Branch must now
4 meet immediately following adjournment of this session,
5 I would ask Delegates Grant and Finch to meet with the
6 Committee on the Judicial Branch tomorrow morning at
7 9:30, and if they can accommodate us, we will be very
8 grateful.

9 We then can follow through with our agenda
10 beginning at ten o'clock as previously scheduled.
11 The next meeting of the Committee on the Judicial Branch
12 will be tomorrow morning at 9:30.

13 THE PRESIDENT: Delegate Moser.

14 DELEGATE MOSER: The Committee on Local Govern-
15 ment will next meet tomorrow morning at 9:00 a.m.
16 when we will continue taking final action votes.

17 THE PRESIDENT: Delegate Morgan.

18 DELEGATE MORGAN: Mr. President, the Committee
19 on the Executive Branch will meet immediately after the
20 adjournment of this session. Hopefully we will get in
21 about three-quarters of an hour of work, will adjourn at

1 6:30, meet again at 8:00.

2 THE PRESIDENT: Delegate Koss.

3 DELEGATE KOSS: Mr. President, the Committee on
4 Suffrage and Elections will meet tomorrow at 10:00,
5 after the session tomorrow if possible, and tomorrow
6 evening.

7 THE PRESIDENT: Delegate Gallagher?

8 DELEGATE GALLAGHER: Mr. President, the Com-
9 mittee on the Legislative Branch will meet immediately
10 after this session to take up one pending matter. Also,
11 to combine proper celebration of Mr. Gilchrist's birthday
12 with a Halloween party.

13 We will meet tomorrow morning at 9:30 and hear
14 Senator Schneider who asked to be heard and will meet
15 at 7:45 tomorrow evening.

16 THE PRESIDENT: Delegate Dulany.

17 DELEGATE DULANY: The Committee on Public
18 Information will meet tomorrow at 1:00 o'clock.

19 THE PRESIDENT: Delegate Boyer.

20 DELEGATE BOYER: Mr. President, the Committee
21 on General Provisions will meet at 7:30 this evening,

1 again tomorrow morning at ten o'clock.

2 THE PRESIDENT: Any further announcements
3 by Committee Chairmen?

4 I neglected to announce yesterday that Mr.
5 Paul Moore started as the Director of Public Information
6 Service of the Convention. I call to your attention that
7 Committee Recommendation SF-1 will probably be on
8 the agenda for tomorrow for consideration by the Committee
9 of the Whole.

10 Are there any other announcements? Are there
11 any Delegates present now who were absent at roll call
12 who desire to record their presence?

13 Delegate Hanson.

14 DELEGATE HANSON: I wish to record my presence.

15 THE PRESIDENT: Delegate Penniman.

16 DELEGATE PENNIMAN: Mr. President, I wish to
17 record my presence.

18 THE PRESIDENT: Delegate Sosnowski.

19 DELEGATE SOSNOWSKI: I wish to record my
20 presence.

21 THE PRESIDENT: Delegate Mudd.

1 DELEGATE MUDD: May I announce Subcommittee
2 Chairman Ben Rosenstock and his Subcommittee will meet at
3 7:00?

4 THE PRESIDENT: This evening?

5 DELEGATE MUDD: Yes.

6 THE PRESIDENT: Any further announcements?

7 Do any other Delegates desire to record their
8 presence?

9 If not, the Chair recognizes Delegate Powers,
10 Chairman of the Committee on Calendar and Agenda.

11 DELEGATE POWERS: Mr. President, I move we
12 adjourn until 2:00 p.m. tomorrow.

13 THE PRESIDENT: All in favor, signify by saying
14 Aye; contrary, No. The Ayes have it. It is so ordered.

15 (Whereupon the meeting adjourned at 5:40 p.m.)
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CONSTITUTIONAL CONVENTION

OF THE

STATE OF MARYLAND

Chamber of the House of Delegates

State Capitol

Annapolis, Maryland

November 1, 1967 - 2 p.m.

HONORABLE H. VERNON ENEY,
PRESIDENT

Reported by:
Price Bannister

1 THE PRESIDENT: The Convention will come to
2 order.

3 The invocation today will be offered by the
4 Reverend Paul Edwin Bohi, Magothy Methodist Church, Pasa-
5 dena, Anne Arundel County.

6 Reverend Bohi.

7 (Whereupon the invocation was offered by the
8 Reverend Bohy.)

9 THE PRESIDENT: Thank you.

10 Roll call.

11 (Whereupon the roll call was taken.)

12 THE PRESIDENT: Have all the Delegates answered
13 the roll call?

14 The Clerk will record the roll call.

15 There being a quorum present, the Convention is
16 in session.

17 The Chair recognizes Delegate Powers, Chairman
18 of the Committee on Calendar and Agenda.

19 DELEGATE POWERS: Mr. President, with respect
20 to Item No. 8 on today's calendar, the Chairman of the
21 Committee on State Finance and Taxation has requested

1 time be given for further consideration of this matter.

2 I therefore move that the calendar be amended
3 by deleting Item 8 and be approved as amended.

4 THE PRESIDENT: Is there a second?

5 (The motion was duly seconded.)

6 THE PRESIDENT: Any discussion?

7 The question arises on the approval of the
8 calendar as amended by elimination of Item 8. All in
9 favor, signify by saying Aye; contrary, No.

10 The Ayes have it. The calendar is adopted
11 as amended.

12 Before proceeding to the next item of
13 business I would like to announce that the crowded condi-
14 tion of the gallery today is due to the fact there are
15 about 112 students of the Hampton Elementary School of
16 the Third District of Baltimore County here today, and
17 they are in the gallery. They are accompanied by their
18 Principal, Mrs. Roberts.

19 We are delighted to have you with us.

20 (Applause.)

21 THE PRESIDENT: May I also say at this time

1 that in keeping with the Convention policy of recognizing
2 the presence in the gallery of groups but not individuals,
3 I would be very happy to have the announcement of the
4 presence of such groups made by the Delegate from the
5 District from which the group comes. If the Delegate
6 in that situation would, prior to the session, either
7 let me know or let Delegate Powers know, we can
8 then arrange to recognize the Delegate immediately after
9 the calendar is adopted so he can make the announcement.

10 Let me also say at this time that I understand
11 that the very good friend of all of us, the wife of
12 Delegate Tawes, Mrs. Tawes, is I understand in the hospital
13 for a minor operation. I am certain that the entire Con-
14 vention joins me in extending to Mrs. Tawes our very best
15 wishes.

16 Delegate Gill.

17 DELEGATE GILL: I would like to acknowledge
18 the presence of students from the Lamell Junior High
19 School and from Forest Park Senior High School, Fourth
20 and Fifth Districts. (Applause.)

21 THE PRESIDENT: Delegate Barrick.

1 DELEGATE BARRICK: We also have in the gallery
2 some students from Frederick County which I would like
3 to acknowledge. (Applause.)

4 THE PRESIDENT: You have on your desk the
5 Memorandum from the Chairman of the Committee on Rules,
6 Credentials and Convention Budget, to which is attached
7 new pages 9 and 12 of that Committee, R&C-12, circulated
8 several days ago.

9 Will you please make sure you have these,
10 substitute the pages, and destroy the old pages.

11 The next item on the calendar is the Reports
12 of other standing Committees. We have presented today
13 Committee Recommendation No. LB-1, accompanied by
14 Committee Memorandum No. LB-1. The Clerk will read the
15 Committee Recommendation.

16 MR. QUILLEN: Committee Recommendation No.
17 LB-1, by the Committee on the Legislative Branch, Francis
18 X. Gallagher, Chairman, A Recommendation that portions of
19 Article III of the new Constitution dealing with the Legis-
20 lative Branch provide for a bicameral legislature, single
21 member districts in both the Senate and the House of

1 Delegates, a limit on the Senate of 35 members and a limit
2 on the House of 105 members, a legislative session lasting
3 90 days, a legislative term of four years, and other legis-
4 lative matters, to read as follows:

5 THE PRESIDENT: The Committee Recommendation
6 is referred to the Committee of the Whole.

7 The Chair recognizes Delegate Gallagher.

8 DELEGATE GALLAGHER: Mr. President, I rise
9 to move that so much be considered reading of the entire
10 Committee Recommendation.

11 THE PRESIDENT: We only have to read the title.

12 If there are no other Reports of standing
13 Committees, you have circulated and on your desk Memoran-
14 dum by Delegate Finch, accompanying Delegate Proposal
15 No. 412; another Memorandum by Delegate Finch, accompany-
16 ing Proposal No. 420; another Memorandum by Delegate Finch
17 accompanying Delegate Proposal No. 327.

18 The next item of business is the introduction
19 and first reading of Proposals. This is a red letter
20 day for the Convention, because for the first time I am
21 happy to announce to you there are no Delegate Proposals

1 to be introduced today. (Applause.)

2 Are there any motions or resolutions?

3 I have a few announcements. I think the de-
4 bate of yesterday demonstrated two things with respect
5 to amendments:

6 (1) That the administrative procedure which
7 has been worked out for the processing of amendments
8 prepared on the floor and processing them quickly so they
9 can get back to your desks in printed form is workable.
10 By actually timing the amendments yesterday it was indicated
11 that short amendments such as we had yesterday could be
12 reproduced and printed and back on the floor in just
13 about 20 minutes after the Delegate left the floor with
14 the amendment in mind. However, I think the experience
15 yesterday also indicates the desirability of having amend-
16 ments to the greatest possible extent prepared in advance.
17 Most of the amendments offered yesterday could have been
18 prepared in advance and would have facilitated the session.

19 The future sessions, which are going to involve
20 perhaps many more amendments and more detailed considera-
21 tion of lengthier recommendations, will make it imperative

1 that to the greatest extent possible the amendments
2 be printed in advance.

3 We will follow this procedure. Mr. Phillips
4 for the time being will be the staff adviser to assist
5 you in preparing amendments. You do not have to write
6 out the amendment in formal language. Simply let him
7 know what amendments you want, let him know as soon as
8 possible. He will see that the amendment is printed.
9 He will deliver to the Delegate proposing the amendment
10 a printed copy or as many additional printed copies as
11 the Delegate wants. That will let the Delegate know
12 that his amendment has in fact been printed.

13 The remaining copies, all of which will be
14 unnumbered, will be retained until the session at which
15 the amendment may be pertinent. At that time the amendments
16 will be in the possession of the chief page. When the Dele-
17 gate offers his amendment it will then be read across the
18 desk, will be numbered and simultaneously will be distributed
19 to the Delegates.

20 If amendments are necessary to be prepared
21 in the course of the session, we will follow the same

1 procedure as of yesterday. Quite obviously if the number
2 of such amendments is too great it will slow down any
3 consideration. More importantly, however, the preparation
4 of amendments in advance will insure that they are properly
5 phrased and more carefully thought out than can possibly
6 be the case with amendments which are prepared while
7 the Committee of the Whole is in session.

8 One other procedural matter I want to take
9 a moment to comment about.

10 I am quite sure that all or nearly all of the
11 Delegates realized yesterday that I was not following the
12 Rules of the Convention in permitting debate on the
13 motion for the Committee of the Whole to rise. I permitted
14 debate in that instance because I was disturbed, lest
15 the Convention fall into the habit of deferring debate
16 for further study and thereby impede the progress of our
17 work. Time is growing short, and we must press ahead.
18 At the same time, it is necessary I think that we not have
19 extended debate on a motion to rise. It is a non-debatable
20 motion, just as is a motion to adjourn.

21 On the other hand, I think it is imperative

1 that before consideration of a motion to rise the entire
2 Committee of the Whole know what effect on the calendar
3 and agenda for ensuing days the adoption of such a motion
4 would cause. I therefore plan to follow the administrative
5 practice which I think is permitted under the rules
6 and in this theParliamentarian concurs, that in the event
7 a motion to rise is made in the Committee of the Whole by
8 any Delegate, it will not be debatable. But before
9 the motion is put to a vote, if it is made by any Delegate
10 other than the Chairman of the Committee on Calendar
11 and Agenda, I will recognize the Chairman of the Committee
12 on Calendar and Agenda to advise the Committee of the Whole
13 what effect the adoption of the amendment will have on
14 the calendar for the ensuing days.

15 This will not be debate, but will be merely
16 a statement for the information of the Committee of the
17 Whole. I make the announcement now so that you all will
18 be informed as to the procedure to be followed, and
19 my reasons for it.

20 I discussed this with the Chairman of the
21 Committee on Rules, Credentials and Convention Budget.

1 He felt that it was proper construction of the rules,
2 and that it was not necessary to consider a rule amendment
3 to accomplish it.

4 Are there any announcements by Committee
5 Chairmen?

6 Delegate Kiefer.

7 DELEGATE KIEFER: Mr. President, the Committee
8 on Personal Rights and Preamble welcomes this opportunity
9 to get back to work. We will assemble as soon as possible
10 after this meeting to consider matters we have been having
11 under discussion this morning.

12 THE PRESIDENT: Delegate Mudd.

13 DELEGATE MUDD: Mr. President, the Committee
14 on the Judicial Branch will meet again 15 minutes after
15 the adjournment of this session, and hopefully this
16 afternoon or tomorrow will complete our final recommenda-
17 tions to the Convention.

18 THE PRESIDENT: Delegate Sherbow.

19 DELEGATE SHERBOW: Mr. President, five members
20 of the Committee on Finance and Taxation will meet with
21 a similar subcommittee of the Legislative Branch immediately

1 after this session over at the Shaw House. The members
2 of the Committee on State Finance and Taxation will meet
3 at three o'clock, and I ask them all to be present so
4 we may continue our deliberations.

5 THE PRESIDENT: Delegate Moser.

6 DELEGATE MOSER: Mr. President, the Drafting
7 Subcommittee of the Committee on Local Government will
8 meet immediately after this session. The Local Government
9 Committee itself will meet at three sharp to continue
10 voting on proposals for final action.

11 THE PRESIDENT: Delegate Morgan.

12 DELEGATE MORGAN: Mr. President, the Committee
13 on the Executive Branch will not meet this afternoon,
14 but will meet tomorrow at 9:30 to have our final review
15 of the draft that we have decided upon. There will prob-
16 ably be some votes for reconsideration, but I am hopeful
17 to dispose of all of them tomorrow morning and report to
18 the Convention next week.

19 THE PRESIDENT: Further announcements by Com-
20 mittee Chairmen?

21 Delegate Penniman.

DELEGATE PENNIMAN: Mr. President, the

1 Committee on Style will meet 15 minutes after the comple-
2 tion of this session.

3 THE PRESIDENT: Delegate Koss.

4 DELEGATE KOSS: Mr. President, the Committee
5 on Suffrage and Elections will meet 20 minutes after the
6 adjournment of this session and will meet again tonight
7 if necessary.

8 THE PRESIDENT: Delegate Gallagher.

9 DELEGATE GALLAGHER: Mr. President, the Com-
10 mittee on the Legislative Branch will meet 15 minutes
11 after the termination of today's session and again tonight
12 at 7:45. The Chair has appointed a five-man subcommittee
13 to meet at 3:00 or immediately after with Judge Sherbow's
14 Committee, Messers. Miller, Hanson, Gilchrist, Sollins,
15 and Bamberger, to discuss SF-1.

16 THE PRESIDENT: Delegate Sherbow.

17 DELEGATE SHERBOW: May I ask a question of
18 Delegate Gallagher, please?

19 THE PRESIDENT: Delegate Gallagher?

20 DELEGATE GALLAGHER: Yes.

21 DELEGATE SHERBOW: I had hoped that your

1 subcommittee would meet with our subcommittee 15 minutes
2 after this session is over. That will enable us to pro-
3 ceed more expeditiously. Would you be willing?

4 DELEGATE GALLAGHER: That is quite agreeable,
5 I am sure; 15 minutes after.

6 THE PRESIDENT: Delegate Boyer.

7 DELEGATE BOYER: Mr. President, in an earlier
8 session the Committee on General Provisions extended
9 written invitations to all Delegates who had proposals
10 referred to our Committee. We were very happy to hear from
11 most of them.

12 Since that time there have been additional
13 proposals introduced and referred to our Committee, so
14 we would like to extend at this point an invitation to all
15 Delegates who have introduced proposals that have been
16 referred to the General Provisions Committee, beginning
17 with Proposal 358 and on and after October 12 to join
18 with us tomorrow afternoon, Thursday afternoon, in order
19 to give us the benefit of your wisdom and deliberations
20 as proponents for your proposals.

21 The General Provisions Committee will meet

1 this afternoon 15 minutes after this session adjourns
2 and again tomorrow morning at ten o'clock.

3 THE PRESIDENT: Delegate Boyer, do you
4 mean 15 minutes after the session?

5 DELEGATE BOYER: Don't I?

6 THE PRESIDENT: I thought you had an appoint-
7 ment with me.

8 DELEGATE BOYER: Yes, sir. We had the schedule
9 all worked out so that I will be with you, but the
10 Committee will go on.

11 THE PRESIDENT: All right.

12 Any further announcements by Committee Chairmen?

13 Any further announcements by other Delegates?

14 If not, the Chair recognizes Delegate Powers
15 of the Committee on Calendar and Agenda.

16 Sorry -- Delegate Hardwicke.

17 DELEGATE HARDWICKE: Mr. Chairman, I would
18 like to note my presence.

19 THE PRESIDENT: Any other Delegates present
20 now not present at roll call?

21 Delegate Stern.

1 DELEGATE STERN: I would like to note my
2 presence.

3 THE PRESIDENT: Any other Delegates desiring
4 to note their presence?

5 Delegate Chabot.

6 DELEGATE CHABOT: I would like to note my
7 presence.

8 THE PRESIDENT: Any other Delegates desiring
9 to note their presence?

10 The Chair recognizes Delegate Powers, Chairman
11 of the Committee on Calendar and Agenda.

12 DELEGATE POWERS: Mr. President, I would move
13 we adjourn until 2:00 p.m. tomorrow.

14 THE CHAIRMAN: All in favor, signify by
15 saying Aye; contrary, No.

16 The Ayes have it. It is so ordered.

17 (Whereupon the meeting adjourned at 2:25 p.m.)

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3 CONSTITUTIONAL CONVENTION
4 OF THE
5 STATE OF MARYLAND
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10 Chamber of the House of Delegates
11 State Capitol
12 Annapolis, Maryland
13 November 2, 1967 - 2 p.m.
14
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16

17 HONORABLE H. VERNON ENEY,
18 PRESIDENT
19

20 Reported by:
21 W. P. Banister

1 THE PRESIDENT: The Convention will please
2 come to order.

3 The invocation today will be offered by the
4 Right Reverend Monsignor Henry Rotrige, Vice Chief of
5 Chaplains, United States Navy. Admiral Rotrige is a
6 former shipmate of Delegate Edward Clarke. Father
7 Rotrige.

8 (Whereupon, the invocation was offered by
9 Father Rotrige.)

10 THE PRESIDENT: Roll call.

11 (Whereupon, a roll call was taken.)

12 THE PRESIDENT: Before recording the roll
13 call, the Chair wishes to announce that pursuant to
14 Rule 24, the Chair has reluctantly granted permission to
15 the Committee on Local Government to continue its session
16 during this session of the Convention.

17 The request of the Chairman of that committee
18 was presented tome urgently on the basis that the committee
19 had been meeting all yesterday afternoon until 11 o'clock
20 last night and from 9 o'clock this morning. They were
21 anxious to conclude their voting in order to present their

1 report to the Convention and feared an interruption for
2 the session of the Convention would throw them back by as
3 much as a full day. Accordingly, Delegates Moser,
4 Barrick, Borom, Boyles, Bryson, Carson, Clagett, Eckenrode,
5 Fox, Freedlander, Grant, Gullett, Leitzel, Macdonald,
6 Needle, Newmann, Ulrich, Wagandt, and Winslow are excused
7 in order to attend the meeting of the Committee on
8 Local Government now proceeding.

9 The Clerk will record the roll call. There
10 being a quorum present, the Convention is in session.

11 The Chair recognizes Delegate Powers, Chairman
12 of the Committee on Calendar and Agenda.

13 DELEGATE POWERS: Mr. President, I move today's
14 calendar and agenda be adopted.

15 THE PRESIDENT: Is there a second?

16 (The motion was duly seconded.)

17 THE PRESIDENT: All in favor, signify by saying
18 Aye; contrary, No. The Ayes have it, the motion is
19 carried. The calendar is adopted.

20 The Chair recognizes Delegate Kirkland.

21 DELEGATE KIRKLAND: Mr. President, it is a

1 pleasure for me to present to the Convention 130 sixth
2 grade students and faculty of the sixth grade students and
3 some of their parents from Woodley Knolls Elementary
4 School in Prince Georges County. Thank you. (Applause.)

5 THE PRESIDENT: I wish also to recognize the
6 presence in the gallery of a student group from
7 Montrose School for Girls at Reisterstown, Maryland. They
8 are attending the General Session this afternoon.
9 (Applause.)

10 Next item on the agenda is reports of other
11 standing committees. There is a report of the Committee
12 on General Provisions, Committee Recommendation GP-2. The
13 Clerk will read the recommendation.

14 MR. QUILLEN: Committee Recommendation GP-2,
15 by the Committee on General Provisions, Elroy D. Boyer,
16 Chairman. A recommendation that the Constitution include
17 a provision on oath.

18 THE PRESIDENT: Committee Recommendation GP-2
19 is referred to the Committee of the Whole. There is
20 filed with this recommendation Committee Memorandum GP-2.
21 You should have both.

1 Next item on the agenda is consideration of the
2 committee report of the Committee on Rules, Credentials
3 and Convention Budget, Rule R&C 12 filed several days
4 ago. The Chair recognizes Delegate Scanlan, Chairman of
5 the Committee and requests that he come forward to the
6 Clerk's desk.

7 DELEGATE SCANLAN: Mr. President, fellow
8 delegates, I have the honor to present the 12th Report
9 of the Committee on Rules, Credentials and Convention
10 Budget, hopefully this should be about our last report,
11 at least on any matter of great substance.

12 Actually the report, I hope you have read it,
13 it is rather long, deals with a number of technical amend-
14 ments to the rules. However, at least two of the proposed
15 amendments to the rules, I think, merit your fairly
16 careful consideration. I won't today repeat everything
17 stated in the report, but I would like briefly to summarize
18 what your committee has proposed.

19 The first amendment we propose is an amendment
20 to present Rule 33. The purpose of the amendment is
21 very simple, to make sure that whatever the rule regarding

1 the printing and distribution of amendments may be, it
2 applies, those requirements apply both in the Committee
3 of the Whole and in the Convention itself. Actually, as
4 I think we are all quite aware, the majority of amendments
5 to be offered by Delegates will be offered in the Committee
6 of the Whole, but, nevertheless, when the Committee on
7 Style has finished its work and the matter comes back
8 before the Convention for second reading, again amendments
9 will be in order. So whatever the rules or requirements
10 with respect to the printing and distribution of amendments,
11 we will come to those in a minute, obviously they should
12 be uniform in both instances.

13 The second amendment we propose is some liberali-
14 zation of matters that can be taken up in the Committee
15 of the Whole. On Page 3 of our report we have two proposed
16 changes regarding matters in the Committee of the Whole.
17 We propose first to prohibit laying the question on the
18 table in the Committee of the Whole. The matter is unclear
19 now under the present rule. On the other hand, the
20 rule regarding the Committee of the Whole makes it perfectly
21 clear that you cannot move the previous question.

1 Therefore, in order not to allow that prohibition
2 to be circumvented and evaded by use of a motion to
3 table, we propose to insert "no question may be laid on
4 the table" in Rule 36 dealing with proceedings in the
5 Committee of the Whole.

6 Secondly, our second suggestion here is again
7 somewhat technical. Under ordinary parliamentary
8 procedure, no motion to postpone to a time certain in
9 the Committee of the Whole can be entertained. We think
10 this is unwise because it has become already apparent,
11 I would think, that sessions of the Committee of the
12 Whole will last four, five, possibly six hours. There
13 may come an occasion when we want to postpone considera-
14 tion of something in the Committee of the Whole to a later
15 hour in the afternoon. The recommendation of your
16 committee would permit that.

17 On the other hand, since the motion to postpone
18 to a time definite under ordinary parliamentary procedure,
19 you will recall that unless these rules provide otherwise,
20 Robert's Rules of Order govern, therefore ordinary
21 parliamentary procedure applies. Since ordinarily

1 in parliamentary practice this is a debatable motion, we
2 could see the Committee of the Whole getting bogged down
3 in debate about whether you should postpone something
4 to a time certain.

5 So that we have provided and recommended
6 limitation on that. We would recommend that the rule be
7 amended by inserting the words "Any motion to postpone
8 further consideration shall be debatable for ten minutes,
9 no speech thereon to exceed two minutes." It would
10 provide very limited debate if and when this type of
11 situation should arise.

12 The next amendment we have again is somewhat
13 technical in nature and I think at the time we considered
14 it somewhat more important and pressing than it is now.
15 It is to make clear the distinction between motions and
16 resolutions. I call your attention to Page 4 of our
17 report in which we recommend that the present Rule 40,
18 which deals with both motions and resolutions, read as
19 follows. Add the following "A motion within this rule
20 includes only the privileged motions listed in Rule 43 or a
21 motion of merely procedural character, such as to take from

1 the table, to send to the Sergeant at Arms,"et cetera.

2 I think the important point here is to note
3 that when a proposal is made on the floor or a recommenda-
4 tion is made on the floor or an amendment is offered on
5 the floor to amend a committee report or recommendation
6 or to amend an amendment to a committee report or recommen-
7 dation, that is a motion and is one of the motions listed
8 in Rule 43, a motion to amend is a traditional motion.
9 I think it is fairly important to maintain the distinction
10 because if something is offered as a resolution, it is
11 referred to a committee. If something is offered as a
12 motion, it can be dealt with on the floor. Obviously
13 when we get to the Committee of the Whole, you will be
14 offering motions to amend committee reports and they should
15 be dealt with on the floor.

16 I think the whole thing was implied under the
17 previous rule anyway but in order to make/crystal clear,
18 your committee has suggested the language set forth at
19 Page 4 of its report.

20 Now we have another technical suggestion.
21 Insertion of the new Rule 44-A to read as follows. Here

1 I think there is a slight typo. "Rule 44-A. Motion to
2 take from the table. After one session day's notice
3 any matter laid on the table may be taken therefrom on
4 motion, provided, that business of the class of the
5 matter be taken from the table" -- the word "to" is
6 left out, appearing after matter, "to be taken from the
7 table would then be in order."

8 As you will recall, there have been at least
9 two motions to table in the Convention that carried.
10 I believe the present motion on the question of the
11 election of vice chairmen. Someone moved something on that
12 matter and the matter was tabled. The second matter that
13 was tabled was one of the reports of this committee dealing
14 with the resolution as to when minority reports had to
15 be filed. That matter was tabled.

16 Technically those matters could still be taken
17 from the table. Since the motion to take from the table
18 is undebatable, it seemed to your committee if such a
19 motion is to be made, that fair notice should be given
20 to the Convention so they would have some time to consider
21 the merits. That is the only purpose of suggested Rule

1 44-A.

2 Here we come to the major recommendation of
3 your committee, that the new Rule 46-A, set forth at the
4 bottom of Page 5 of the report, I think it is important
5 enough to read to you, "Rule 46-A, amendments to be
6 printed. No amendment to any committee recommendation or
7 delegate proposal shall be considered unless it is submitted
8 in writing and a copy thereof delivered to the floor
9 desk of each delegate prior to the time the
10 amendment is offered."

11 We had some advance indication of how this
12 procedure would work during the debate on the first report
13 of the Committee on General Provisions dealing with the
14 creation of a militia. There are a number of ways, I
15 suppose, one could deal with this problem. One could have
16 a hopper rule requiring that all amendments be in the
17 hopper by a certain time. This seemed unfair to all of
18 your committee. We could follow the procedure of the
19 General Assembly that when an amendment is offered there
20 be some layover time, usually a day, but then as the session
21 proceeds maybe for an hour.

1 Again your committee has unanimously rejected that
2 suggestion because of its built-in tendency for delay and
3 filibuster.

4 There was a suggestion that the Chair be
5 given discretion to determine whether in a particular
6 instance an amendment had to be printed and distributed,
7 or whether the majority of the delegates should have that
8 discretion. Again we felt that there would be endless
9 debate and arguments about a particular case whether an
10 amendment should be exempted from the rule and another
11 delegate's proposal was not. So we rejected all of those.

12 One of the reasons we did so was because of the
13 administrative procedures which the President and other
14 officers of the Convention had assured your committee
15 would be followed the other day in the debate on the
16 militia. That is that there will be competent secretaries
17 immediately available, staff help, to prepare and have
18 reproduced and have distributed any amendment by any
19 delegate. I think if last, I guess it was the other day's,
20 if that experience is any indication, the procedure
21 seemed to work only too well. There was no problem about

1 getting amendments prepared, printed, and distributed.

2 There is a second protection here. Under
3 ordinary parliamentary rules, when a matter comes before
4 the Convention, it is a main question unless divided.
5 Ordinarily, all parts of the main question can be considered
6 seriatim so you will have an opportunity to offer an
7 amendment to a part. Then at the end the whole question
8 will be open again for amendment. I think the best example
9 is suppose the Legislative Committee had suggested a
10 whole Legislative Article. Its recommendations, its report
11 would be the main question. Therefore, amendments would
12 be proper after each part in turn seriatim and at the end
13 after all was done an amendment that was germane previously
14 would still be germane with respect to the whole
15 question. You have that additional protection.

16 We have an amendment to Rule 47, again a
17 technical parliamentary matter, to make it clear that when
18 a question is divided, the same seriatim procedure shall
19 still apply. Under ordinary parliamentary law, once a
20 main question is divided, then both, take a question
21 divided in two parts, both parts are equally a main

1 question. When you come to the end of the consideration
2 of the first main question, that is the end of the matter.
3 No other amendments would be appropriate.

4 The proposal we have in the amendment to Rule
5 47 is to make it clear that even after a question is
6 divided, the same seriatim consideration that would be
7 applicable in the case of a nondivided main question would
8 still be applicable.

9 Our last change, again while it is somewhat
10 a major change, it perhaps is not as important as might
11 appear. That is an amendment to Rule 50. Rule 50 is the
12 rule that deals with reconsideration in the Convention,
13 not in the Committee of the Whole -- not in the Committee
14 of the Whole, but in the Convention.

15 Your committee recommends that the present rule
16 be eliminated and an entirely new and somewhat more
17 liberal rule be adopted, more liberal in the sense that it
18 gives the delegate a little more chance to have his
19 question reconsidered.

20 The first major aspect of it is that any question
21 that has been adopted or rejected by the Convention may be

1 reconsidered on motion at any time before the Convention
2 adjourns. We are talking now only in the Convention,
3 not talking about the Committee of the Whole, for
4 reconsideration in the Committee of the Whole is governed
5 by Rule 35 and in effect it means if you reconsider it, you do
6 it at that session of the Committee of the Whole. We talk
7 about the Convention specifically, we talk about the
8 Convention, I guess, on second reading, after everything
9 has come back or things are coming back from the Committee
10 on Style.

11 Your committee proposes that no questions may
12 be reconsidered more than once in the Convention with
13 three exceptions. One, if the Committee on Style requests
14 it. Two, if the committee, substantive committee that
15 originally reported the matter, suggests it. Finally,
16 this is the more liberalizing provision, upon a petition
17 signed by 15 delegates. These are the three instances
18 where something could be **reconsidered** more than once.

19 We also permit, even if a motion to reconsider
20 has been once defeated, a delegate makes a motion to
21 reconsider, it is defeated or tabled, that would not

1 prohibit the Committee on Style or the substantive
2 committee or 15 delegates asking that the motion again be
3 reconsidered.

4 We followed here, I think, the tradition or
5 practice that prevailed in the great Constitutional
6 Convention of 1787 where reconsideration was permitted
7 day after day and time after time. But the significant
8 difference between that historical precedent and the rule
9 we suggest is that there the reconsideration took place
10 in the Committee of the Whole. The rule as liberalized,
11 proposed by your committee, would only be applicable to
12 the Convention, proceedings in the Convention itself,
13 most specifically, I would think, on second reading.

14 I suppose I have omitted some details, the
15 report is long enough, I hope you have all read it. This
16 then is the Twelfth Report of your committee.

17 THE PRESIDENT: Are there any questions of the
18 Chairman of the Committee for purposes of clarification?
19 Delegate Johnson.

20 DELEGATE JOHNSON: Delegate Scanlan, I realize,
21 of course, this report was prepared prior to our experience

1 with the militia --

2 DELEGATE SCANLAN: Yes, it was.

3 DELEGATE JOHNSON: -- in the Committee of the
4 Whole. I wonder, because of our experience, whether or
5 not it wouldn't be better, under Rule 46-A on Page 5,
6 whether or not to delete the requirement that the amendment
7 be placed on the desk of each delegate prior to the time
8 the amendment is offered. The rule would still provide,
9 of course, that the amendment would have to be in writing,
10 that it would have to appear at the floor desk, but
11 because experience has shown there will be times when a
12 delegate may wish to withdraw his amendment and to avoid
13 unnesessarily cluttering the delegates' desks with amend-
14 ments, that may be withdrawn or may not be finally offered,
15 and because delegates may have a similar amendment in mind
16 and there would be duplication, I am wondering if the
17 chairman would delete that language and still carry the
18 thrust of the committee's proposal?

19 THE PRESIDENT: Before the Chairman of the
20 Committee answers the question, let me clarify one matter
21 of procedure.

1 Unlike the procedure several days ago, where
2 the amendments were inadvertantly numbered, they will not
3 be numbered hereafter. They will not be circulated to the
4 delegates until they are ready to be offered by the dele-
5 gate. They will then be circulated but not before.

6 DELEGATE SCANLAN: I think if that is the practice
7 to be followed, that would square with the rule a little
8 better. You have a point, Joe.

9 DELEGATE JOHNSON: Thank you.

10 THE PRESIDENT: For what purpose does Delegate
11 Pullen arise?

12 DELEGATE PULLEN: Section 46-A, I think it is
13 very important.

14 THE PRESIDENT: You may proceed.

15 DELEGATE PULLEN: Mr. Chairman, I think the
16 recommendation 46-A from a personal experience is probably
17 the most intelligent thing the Rules Committee has done yet.

18 THE PRESIDENT: Delegate Pullen, the present
19 procedure is only for the purpose of asking questions
20 of the committee chairman.

21 DELEGATE SCANLAN: Damned with faint praise.

1 DELEGATE PULLEN: If I were a lawyer, I could
2 phrase it in the form of a question, but I should like
3 to have the privilege of making this particular comment,
4 and you can put it in the form of a question.

5 THE PRESIDENT: You will have an opportunity
6 to make any comment you choose as soon as the question
7 period is concluded. I just want to have the question
8 period concluded first.

9 DELEGATE PULLEN: How long will that be, sir?
10 (Laughter.)

11 DELEGATE SCANLAN: It depends in part on
12 you, Dr. Pullen. (Laughter.)

13 THE PRESIDENT: I would recognize you first
14 right after the question period is concluded.

15 DELEGATE PULLEN: I will trust to Providence.

16 THE PRESIDENT: Are there any further questions
17 of the Chair, questions for the purpose of clarification?
18 Delegate Marion.

19 DELEGATE MARION: On Page 10, there are three
20 ways in your proposed amendment to Rule 50 that reconsidera-
21 tion can be had more than once.

1 DELEGATE SCANLAN: Correct.

2 DELEGATE MARION: The second in Line 12 says
3 by the Convention Committee. Do you mean by the
4 majority of the members of that Convention Committee or
5 by the Chairman or by the Vice Chairman?

6 DELEGATE SCANLAN: You are quite right. We say
7 by the Convention Committee which reported on the matter
8 and since earlier in the rules dealing with committees you
9 need a majority to have a committee report, we intended --
10 the language isn't there -- we intended it to mean the
11 majority of the committee, that a minority couldn't do
12 it, a majority would have to do it.

13 THE PRESIDENT: Any further questions for
14 purposes of clarification? Delegate Burdette?

15 DELEGATE BURDETTE: Mr. President, I have two
16 questions. Both of my questions are perhaps really
17 directed to the Chair but I will address them to the Chairman
18 of the Committee in the hope that they may be answered
19 somewhat in the fashion the first question was.

20 My first question is in pursuance of the ques-
21 tion already raised by Delegate Johnson. It is this. In

1 the light of the President's interpretation of procedure,
2 which indeed was announced day before yesterday, how can
3 we properly adopt a rule change which says that amendments
4 must be submitted in writing, copy thereof delivered to the
5 floor desk of each delegate prior to the time the amend-
6 ment is offered? It seems to me that the President's
7 procedure is a very much better one, that is, that it be
8 printed, it be available, and if they are offered, that
9 they be distributed. That was the first question.

10 THE PRESIDENT: This is, if the Chair may answer
11 that, because it is a matter of procedure, this is precisely
12 what is contemplated. Prior to the time the amendment
13 is offered, immediately prior, a matter of a few seconds,
14 the procedure will be this. The delegates hopefully
15 will have their amendments prepared, given to the staff
16 officer, Dr. Phillips, and printed well in advance of the
17 session. All of the printed amendments with the exception
18 of the one delivered to the sponsor or more if he requests
19 will be delivered to the Chief Page and will be retained
20 by her and not distributed until the delegate indicates
21 that he desires to offer the amendment. When the delegate

1 wishes to offer the amendment and obtains recognition
2 from the Chair for that purpose, the Chair will ask him
3 to send the amendment forward to the desk to be read.
4 While that is being done, the Chief Page will see that the
5 copies are distributed to the desks of the delegates.
6 So that by the time the Reading Clerk is reading the
7 amendments, the pages hopefully will have them in the hands
8 of the delegates.

9 DELEGATE BURDETTE: Mr. President, thank you. I
10 have a second question, if I may ask it.

11 In the debate the other day, if my memory is
12 correct, we introduced what I thought was salutary
13 informality in making technical improvements. I believe
14 the word "in" was changed to "of" almost by general
15 agreement. There was a second method of introducing
16 amendments in reality. That was that a delegate rose and
17 said to the mover, would you accept a change of a word?
18 This informality permits a very ready interchange if it does
19 not involve a long amendment.

20 If we were to interpret the rules literally
21 that to change a typographical error that turns up or is

1 noted on the floor the amendment had to be printed, it
2 would delay the proceeding. Could we get an interpretation
3 from you?

4 THE PRESIDENT: Again, if I may undertake to
5 answer in lieu of the Chairman of the Committee, and
6 state the interpretation which I think the Presiding
7 Officer should give to the rule, it would be this. If
8 a printed recommendation or printed amendment contains a
9 typographical error, such as occurred the other day,
10 error in one word, I would take it that the typographical
11 error could be corrected without being reprinted, in the
12 absence of objection.

13 If a delegate desired to suggest to the
14 sponsor a modification of the printed amendment, I take
15 it that the modification, if accepted by the sponsor,
16 could be made to the printed amendment if it was
17 accepted by the sponsor and if there was no objection.
18 Obviously if the modification was long and detailed, there
19 would be an objection or the Chair itself would require
20 that the amendment be reprinted.

21 DELEGATE BURDETTE: Mr. President, I would think

1 also if the modification that were to be suggested would
2 be long and involved or modestly so, it would still be
3 possible to have the change printed or Xeroxed or some
4 other interpretation of printing very quickly.

5 THE PRESIDENT: A matter of 15 or 20 minutes,
6 I think so.

7 DELEGATE BURDETTE: Thank you.

8 THE PRESIDENT: Any further questions of the
9 chairman for purposes of clarification? If not, the
10 Chair --

11 DELEGATE WHEATLEY: Mr. President.

12 THE PRESIDENT: Sorry. Delegate Wheatley.

13 DELEGATE WHEATLEY: Mr. Chairman, I was
14 questioning the language on Page 7 of the report, not as
15 to objection, but for clarification, in which we
16 discussed the procedure for amendments, and that we would
17 first have the opportunity to present amendments seriatim
18 and then further on in the page we point out the
19 commentary. This means that there will be two opportunities
20 to prepare and offer it.

21 I wonder about the thinking of the committee

1 as to, A, whether or not we can afford this luxury and,
2 as we get further along, B, if the Chairman could refresh
3 my memory as to amendments, as to second or third reading
4 in the Convention, what is the provision relative to that?

5 DELEGATE SCANLAN: Answering your first
6 question, following traditional parliamentary procedure,
7 are we indulging in a luxury we can't afford? The
8 committee felt not. We felt this would be a fair opportunity
9 to give a delegate who hadn't thought of an amendment a
10 chance to offer it on the floor, the first time when the
11 particular section of the main question was being amended
12 and finally when the last call came on the question of the
13 whole main question, he would have another opportunity.
14 Of course, he couldn't offer it twice except maybe under
15 reconsideration.

16 I am sure there is a possibility of abuse here
17 but I think that we wanted to be sure that the administra-
18 tive procedures established by the President and the
19 officers really gave a delegate a chance to get his amend-
20 ment printed and distributed in time. I think the procedure
21 of the other day shows this can be done realistically, at

1 least with reasonably short amendments. I suppose we will
2 have longer ones later on.

3 In that connection, might I transmit to you
4 what one of the members of the Rules Committee suggested
5 would be a good thing, that anybody who is contemplating
6 an amendment to a committee report, that he first consult
7 with the chairman of the committee to find out if his
8 particular amendment was dealt with, the issue was dealt
9 with in the committee, if it was rejected, why it was
10 rejected, et cetera. This might cut down on amendments
11 because after all, we will have at least three or four
12 days before a committee report is taken up once it reaches
13 the Committee of the Whole. I think this would be a
14 salutary practice and might minimize or cut down the number
15 of amendments otherwise offered. I plead guilty here that
16 a number of amendments offered the other day just as well
17 could have been prepared prior to the session.

18 Your second question, Mr. Wheatley, was in
19 connection with the second reading procedure. I wasn't
20 quite sure what your question was.

21 DELEGATE WHEATLEY: I don't have any rules

1 here. It is as to the amendment procedure for second and
2 third reading.

3 DELEGATE SCANLAN: The amendment procedure we
4 adopt here, if we adopt it, is going to be applicable on
5 second reading too, the same procedure would be applicable.
6 In other words, the Committee of the Whole has finished
7 its business, everything has gone to the Committee on
8 Style, and then their reports start coming to the floor
9 of the Convention for second reading, which will be the
10 key reading. At this point the same rules regarding
11 printing and distribution of amendments would be applicable.

12 DELEGATE WHEATLEY: Consideration of
13 amendments would also allow the person to amend seriatim
14 and also on the whole question in the Convention itself,
15 is that correct?

16 DELEGATE SCANLAN: Yes.

17 DELEGATE WHEATLEY: Actually you would have at
18 least four opportunities then?

19 DELEGATE SCANLAN: That is correct.

20 DELEGATE WHEATLEY: How about on third reading?
21

1 DELEGATE SCANLAN: The third reading hopefully
2 would be the whole proposed new Constitution taken up as
3 one main question. But I suppose again, there was
4 earlier in the proceedings of this Convention the
5 suggestion by at least one delegate I thought had some
6 merit that would limit debate on third reading to new
7 matter. But that has never been adopted by the Convention
8 and is a matter that perhaps we might want to think about.

9 DELEGATE WHEATLEY: May I pose one other question
10 that I had a problem in our committee somewhat. That is
11 when the Committee on Style and Drafting reports, would
12 the same **rules** of amendment apply again?

13 DELEGATE SCANLAN: They will report that to the
14 Convention.

15 DELEGATE WHEATLEY: Yes, in the Convention.

16 DELEGATE SCANLAN: That is correct. My answer
17 was yes.

18 DELEGATE WHEATLEY: The possibility would arise
19 here of two other occasions on which amendments --

20 DELEGATE SCANLAN: Now you are overlapping.
21 Second reading would be consideration of the report of the

1 Committee on Style.

2 DELEGATE WHEATLEY: Which would be the
3 exclusive consideration and second reading?

4 DELEGATE SCANLAN: That is correct.

5 THE PRESIDENT: Any further questions for
6 purposes of clarification? If not, then before recognizing
7 Delegate Pullen, I would like to recognize the presence in
8 the gallery of the Honorable Frederick W. Brune and
9 Mrs. Brune. You all know Judge Brune, former Chief Judge
10 of the Court of Appeals of Maryland. We are very proud
11 to have them both with us today. (Applause.)

12 I understand Delegate Pullen has a pressing
13 engagement which may require him to leave before the
14 session is over. The chair therefore recognizes him at
15 the moment for the purpose of making a comment with respect
16 to this report even though there is no motion now before
17 us. Delegate Pullen.

18 DELEGATE PULLEN: Mr. President, I appreciate
19 your courtesy. I want to compliment the Rules Committee
20 on bringing forth Rule 46-A. In my innocence two days ago
21 I assumed that the minority report was on the desk of every

1 delegate and further that the amendments offered were
2 really in the nature of proposals which would go before
3 the group and be read before consideration and probably
4 the mistake did some good because it has changed the
5 rule.

6 But seriously, sir, I think this is very
7 important and I think if we had this material beforehand
8 we would save a lot of talk.

9 THE PRESIDENT: Thank you, Delegate Pullen.
10 The Chair recognizes Delegate Scanlan for the purpose of
11 making the motion. It seems to me that in view of the
12 number of changes, it might be desirable to take them up
13 separately, Delegate Scanlan. I wonder if you would
14 want to consider the proposed change in Rule 46-A before
15 you consider the change in Rule 33 inasmuch as the change
16 in Rule 33 depends upon the amendment of Rule 46-A.
17 Or you could take those two together, if you wish.

18 DELEGATE SCANLAN: The committee favorably
19 recommends and we move the Convention adopt a new Rule
20 46-A as it appears on Lines 41 through 48 of Page 5 of
21 the Twelfth Report of your committee.

1 (The motion was duly seconded.)

2 THE PRESIDENT: The question arises on the
3 adoption of the amendment to Rule 46-A as printed in Lines
4 41 to 48 on Page 5 of the committee report R&C 12. Is
5 there any discussion? Are you ready for the question?
6 A vote Aye is a vote in favor of the change in the rule
7 as printed on Page 5, a vote No against. All in favor,
8 signify by saying Aye; contrary, No. The Ayes have it.
9 The motion is carried and the amendment is adopted.
10 Delegate Scanlan.

11 DELEGATE SCANLAN: The Committee favorably
12 recommends and we move that present Rule 33 of the
13 standing rules of the Convention be deleted and that there
14 be substituted therefor the language appearing on Line 11
15 through 16 on Page 2 of the Twelfth Report of this
16 committee.

17 (The motion was duly seconded.)

18 THE PRESIDENT: The question arises on the
19 motion to adopt the change, the amendment of Rule 33 as
20 appears in Lines 11 to 16 of Page 2 of the committee report.
21 Any discussion? Ready for the question? A vote Aye is

1 a vote in favor of the adoption of the change. A vote
2 No is a vote against. All in favor, signify by saying
3 Aye; contrary, No. The Ayes have it. The motion is adopted,
4 the change is made. Delegate Scanlan.

5 DELEGATE SCANLAN: The committee favorably
6 reports and recommends that Rule 36 be amended by inserting
7 the following language. First, after the words "except
8 that the Committee of the Whole cannot adjourn the
9 Convention"insert "no question may be laid on the table."
10 Secondly in that same rule, the language here is found
11 on Page 3 of our report, that same rule after the words
12 "a majority of the committee shall govern its action"
13 insert "any motion to postpone further consideration
14 shall be debatable for ten minutes, no speech thereon
15 to exceed two minutes."

16 THE PRESIDENT: The question arises on the
17 adoption of the amendment to Rule 36 as printed in the
18 report of the committee. The chair recognizes delegate
19 Rybczynski.

20 DELEGATE RYBCZYNSKI: Mr. President, Mr.
21 Chairman, I would suggest the rule is prohibitive to a

1 too great extent in that the President or the Chairman
2 of the Committee of the Whole at the time would be precluded
3 from allowing the opposition to speak in the event that
4 five persons in a row all spoke on the same side. If it
5 is in order, I would move at this time to amend after
6 the word "minutes" in Line, either 22 or 23 --

7 DELEGATE SCANLAN: 23.

8 DELEGATE RYBCZYNSKI: -- to add "on each side,"
9 which would then allow the President or Chairman to
10 allow both sides to speak.

11 THE PRESIDENT: Would the Chairman of the
12 committee be disposed to accept the suggested modification.

13 DELEGATE SCANLAN: I think so. I think the
14 intention was if there was to be debate, it would be
15 fairly allocated.

16 THE PRESIDENT: Is there any objection? If
17 not, the amendment will be considered as printed on Page
18 3 with the modification that in Line 23 after the word
19 "minutes" and before the comma, the words "on each side"
20 be inserted. Is there any further discussion?

21 Delegate Storm.

1 DELEGATE STORM: I just want to be sure, Mr.
2 Chairman, does that come after the words "ten minutes on
3 each side" or after the words in the next line, "two
4 minutes on each side"?

5 THE PRESIDENT: After the words "ten (10)
6 minutes," then insert "on each side." Any further
7 discussion? As I am sure some of you have noted, these
8 are amendments to the by-laws, which require a majority of
9 72, when normally we would take a roll call vote. I
10 have on the two previous votes not taken a roll call
11 because they were unanimous and no objection. If there
12 are any Nay votes on any amendments, we will take a roll
13 call vote. A vote Aye is a vote in favor of the amendment
14 as printed on Page 3 of the Committee Report with the
15 modification in Line 23 of adding the words "On each side"
16 after the words "ten (10) minutes." A vote Aye is a vote in
17 favor of the amendment as modified. All in favor
18 signify by saying aye; contrary, no. The Ayes have it
19 unanimously. Delegate Scanlan.

20 DELEGATE SCANLAN: The Committee on Rules
21 favorably reports and recommends that the Convention adopt

1 an amendment, the amendment to Rule 40, proposed by the
2 committee and appearing on Lines 34 through 43 of Page 4
3 of the Committee's Twelfth Report.

4 THE PRESIDENT: The question arises on the
5 adoption of the amendment of Rule 40 as printed in Lines
6 34 to 43 on Page 4 of the committee report. Is there any
7 discussion? Are you ready for the question? A vote Aye
8 is a vote in favor of the amendment of the rule.

9 A vote No a vote against. All in favor, signify by saying
10 aye; contrary, no. The Ayes have it unanimously. The
11 motion is carried. The amendment is adopted. Delegate
12 Scanlan.

13 DELEGATE SCANLAN: Your committee favorably
14 reports and recommends that the Convention adopt a new
15 Rule 44-A as set forth on Lines 16 through 22 of Page
16 5 of the Twelfth Report with the insertion of the word
17 "to" between the word "matter" and the word "be" appearing
18 on Line 21, a typographical omission.

19 (The motion was duly seconded.)

20 THE PRESIDENT: The question arises on the adoption
21 of a new Rule 44-A as printed on Lines 16 to 22, inclusive,

1 on Page 5 of the committee report with the addition of the
2 word "to" before the word "be" and the word "taken" in
3 Line 21. Is there any discussion? Are you ready for
4 the question? All in favor, signify by saying Aye;
5 contrary, No. The Ayes have it unanimously. Delegate
6 Scanlan.

7 DELEGATE SCANLAN: The Committee on Rules
8 favorably reports and recommends that the Convention
9 adopt an amendment to Rule 47 as set forth in the
10 language contained in Lines 4 through 12 appearing on Page
11 9 in the Committee's Twelfth Report.

12 THE PRESIDENT: The question arises on the
13 adoption of new Rule 46-A in Lines --

14 DELEGATE SCANLAN: Sorry. Addition to Rule
15 47. We already dealt with 46-A.

16 THE PRESIDENT: Sorry. The question arises
17 on the amendment of Rule 47 as printed in Lines 5 to 13
18 on Page 9 of the committee report. Is there any discussion?
19 Are you ready for the question? All in favor, signify
20 by saying Aye; contrary, No. The Ayes have it unanimously.
21 Delegate Scanlan.

1 DELEGATE SCANLAN: Finally your committee
2 favorably reports and recommends the present Rule 50
3 dealing with reconsideration of the Convention be deleted
4 and there be substituted therefor a new Rule 50 represented
5 by language which begins on Line 44 at Page 9 and ends
6 on Line 37 of Page 10 of the Twelfth Report of the
7 committee.

8 (The motion was duly seconded.)

9 THE PRESIDENT: The question arises on the
10 deletion of present Rule 50 and substitution of new
11 Rule 50 as it is printed on Pages 9 and 10 of the committee
12 report. Is there any discussion? Are you ready for the
13 question? A vote Aye is a vote in favor of the new
14 rule as printed. A vote No is a vote against. All in
15 favor, signify by saying Aye; contrary, No. The Ayes
16 have it unanimously. Thank you, Delegate Scanlan.

17 The Chair is pleased to recognize in the
18 gallery the presence of Senator Margaret Schweinhaut.

19 The next item is to call to your attention that
20 there has been filed today and should be on your desks
21 memorandum accompanying Delegate Proposal No. 411 by

1 Delegate Finch, memorandum accompanying Delegate Proposal
2 No. 416, by Delegate Finch, memorandum accompanying
3 Delegate Proposal No. 417, by Delegate Finch, memorandum
4 accompanying Delegate Proposal 440, by Delegate Taylor.

5 At the request of the President, two proposals
6 heretofore referred have been returned to me. The Clerk
7 will please hand them to me. Delegate Proposal No. 386, here-
8 tofore referred to the Committee on Suffrage and Elections,
9 has been returned by that committee at my request and I
10 now re-refer it to the Committee on the Executive Branch.

11 I might say this was originally referred
12 to the Committee on Suffrage and Elections because in
13 a general way it dealt with the same subject as recall
14 of elected officials, which the Committee on Suffrage
15 and Elections has had under consideration. That committee
16 advised it does not intend to report any provisions of
17 the new Constitution dealing with recall of elected officials
18 and I have for that reason re-referred the proposal to the
19 Committee on the Executive Branch.

20 Delegate Proposal No. 441 has been at my
21 request returned to me by the Committee on the Judicial

1 Branch and I now refer it to the Committee on Personal
2 Rights and the Preamble. Here again as to the problem
3 as to which committee should consider the matter, both of
4 these committees should consider it. The committee on the
5 Judicial Branch has advised me that it does not intend to
6 take any action with respect to the proposal , and
7 accordingly, I refer it to the Committee on Personal
8 Rights and the Preamble.

9 I am happy to advise you that again today for
10 the second time there are no new delegate proposals to be
11 introduced.

12 Are there any motions or resolutions? If not,
13 I have several announcements to make.

14 First, and I think perhaps the most important
15 of the announcements, is that it gives me a great deal of
16 pleasure and I may say relief, personal relief, to
17 announce to the Convention that I have appointed Mr.
18 Sherrod East as historian or more accurately, archivist of
19 the Convention. Mr. East is presently retired but until
20 very recently was assistant archivist in charge of the
21 military affairs division of the office of National

1 Archives and Records in Washington. He has had many years'
2 experience in this very exacting occupation and I think
3 we are indeed fortunate that he has agreed to serve in
4 this capacity for the Convention.

5 I hand to the Journal Clerk the announcement
6 as to the absences which under the rules of the Convention
7 I have excused for the pay period beginning October 18 and
8 ending October 31, '67. I will request that this be
9 entered in the journal. I do not think it necessary to
10 read it. Any delegate desiring to can examine the
11 memorandum at his convenience. Any absences not included
12 in the memorandum I have just handed to the Journal Clerk
13 are not excused.

14 I have been requested by Attorney General
15 Burch to announce to you that he has printed additional
16 copies of the remarks which he made before the Committee
17 on the Executive Branch dealing with the functions and
18 duties of the office of Attorney General. Any delegate
19 desiring to obtain copies of these remarks may obtain the
20 same from the Attorney General's office on the first floor
21 of the State House.

1 One other announcement of interest to the
2 Convention, I think, is that I have granted a brief
3 leave of absence to the Sergeant at Arms, Richard Rothenberg,
4 and in his absence have designated Edward Smith, a member
5 of the staff, professional staff of the Convention, as
6 Assistant Sergeant at Arms. The leave of absence is
7 granted at the request of Sergeant at Arms Rothenberg to
8 enable him to be married tomorrow. (Applause.) He will
9 return to his usual occupation Tuesday. He said a
10 long weekend would suffice for the moment. (Laughter.)

11 Are there any delegates present now who were
12 absent at roll call who desire to indicate their presence?
13 If not, are there any announcements from committee chairmen?
14 Sorry. Delegate Gleason.

15 DELEGATE GLEASON: I would like to have my
16 presence acknowledged, please, sir.

17 THE PRESIDENT: Any other delegates absent
18 at roll call who desire to indicate their presence?
19 Delegate Kiefer.

20 DELEGATE KIEFER: Mr. President, the Committee
21 on Personal Rights and the Preamble will meet 15 minutes

1 after this meeting adjourns.

2 THE PRESIDENT: Delegate Mudd.

3 DELEGATE MUDD: Mr. President, the Committee
4 on the Judicial Branch likewise will meet 15 minutes after
5 this session adjourns.

6 THE PRESIDENT: Any other announcements by
7 committee chairmen? Delegate Koss.

8 DELEGATE KOSS: Mr. President, the Committee
9 on Suffrage and Elections will meet tomorrow morning at
10 10:30.

11 THE PRESIDENT: Delegate Gallagher.

12 DELEGATE GALLAGHER: Mr. President, the Committee
13 on the Legislative Branch will not meet at all for the
14 remainder of the day to give the many talented authors
15 of minority reports sufficient time to get them together
16 for the onslaught next week. We will meet, however, at
17 10 o'clock tomorrow morning to continue to hear delegates
18 on their proposals.

19 THE PRESIDENT: Delegate Dulany.

20 DELEGATE DULANY: Mr. President, the Committee
21 on Public Information will meet tomorrow at 1 o'clock.

1 THE PRESIDENT: Delegate Morgan.

2 DELEGATE MORGAN: Mr. President, the Committee
3 on the Executive Branch will meet immediately following
4 the plenary session to finish its final wind-up of the
5 Executive Article.

6 THE PRESIDENT: Any further announcements by
7 committee chairmen? Delegate Boyer.

8 DELEGATE BOYER: Mr. President, the General
9 Provisions Committee will meet 15 minutes after this
10 session in order to hear from the individual delegates
11 on the proposals that have been referred to our
12 committee since our last invitation.

13 May I specifically call to your attention the
14 proposals will be No. 358, 372, 389, 390, 391, 398, 408,
15 412, 415, and No. 25.

16 I assume you individual delegates know your
17 own bills so I won't refer to them by name, but may I
18 caution that this will probably be the last opportunity
19 the General Provisions Committee will have in order to
20 hear you as proponents so we strenuously urge and invite
21 you to come and be heard. Thank you.

1 THE PRESIDENT: Delegate Sherbow.

2 DELEGATE SHERBOW: Mr. President, the Committee
3 on State Finance and Taxation will not meet until 11
4 o'clock tomorrow morning to enable some of us to try to
5 finalize some of the language of some portions of our
6 proposals.

7 THE PRESIDENT: Any further announcements by
8 committee chairmen? Any other announcements?

9 One comment I would like to make. As
10 indicated by the announcements of the committee chairmen,
11 most of the committees either have concluded their
12 deliberations on their principal recommendations or will
13 do so today or tomorrow. Every effort is being made
14 to expedite the completion of the recommendations of these
15 committees and the supporting memoranda. So that I am
16 very hopeful that on Monday a number of these will be
17 filed.

18 May I urge all delegates who, because of this
19 situation, have a few hours of freedom between now and
20 Monday morning, will you please devote that time to work
21 on the minority reports. The reports or the supporting

1 memoranda of the majority of the committee will not be
2 delayed for completion of the minority reports. You can
3 use the time now when the committee staff is working on
4 the supporting memorandum for the committee recommendation
5 to work on your committee reports. The staff of the
6 Convention will render whatever assistance it can to
7 the minority members in this connection. Delegate
8 Sherbow.

9 DELEGATE SHERBOW: I would like to address a
10 question to the chair, not only for my benefit, but for
11 the benefit of other members of the Convention.

12 We had filed a recommendation dealing with the
13 subject matter of the state auditor. Thereafter another
14 committee through its chairman communicated with us and
15 then we were able to thresh out differences between them
16 and our draft in such a way that at least we avoid a
17 great deal of word surgery on the floor. We thereupon
18 sent the amendment over to the Convention Headquarters
19 here. What I would like to know is under this
20 procedure when will the amendment be forwarded to the
21 membership? Will there be a wait of two days as is the

1 usual case? Just what will the procedure be so that
2 we will all know how to handle it.

3 THE PRESIDENT: The procedure will be this.
4 The recommendation of the committee which is SF-1 will
5 probably be on the agenda for tomorrow. The amendment
6 which has been prepared under the practice I have announced,
7 will not be distributed to the delegates until it is
8 offered by the proponent. If the proponent desires to
9 have the amendment distributed now or beforehand, he has
10 only to request it and we will do so. The withholding
11 of the amendment until the delegate offers it is at
12 his option.

13 DELEGATE SHERBOW: Mr. President, I would like
14 to request that it be distributed. It actually is in
15 place of SF-1 and will be totally in its place and then
16 subject to amendment thereafter on the floor.

17 THE PRESIDENT: All right. In view of that
18 request, I will request the Chief Page to see that a
19 copy of the amendment, which is very short, is distributed
20 this afternoon to the desks of every delegate in his
21 committee room and an additional copy placed on the desk of

1 each delegate on the floor so that you have it in one of
2 the two places. Delegate Wheatley.

3 DELEGATE WHEATLEY: Mr. President, a parliamentary
4 inquiry. If the amendment is offered to the report, under
5 the rules, would this then allow us to amend only once
6 or would there still be -- if the amendment is offered by
7 the committee to the original report, would then only one
8 other amendment to that be in order under the rule of
9 tertiary amendments or will we be able to amend the amendment
10 to the amendment?

11 THE PRESIDENT: I would not think that normally
12 you would be limited to one but this is a one-sentence
13 report and a one-sentence amendment. I am not sure.

14 I think in this particular instance we would
15 request the sponsor of the amendment to offer it as a
16 substitute for the committee recommendation. It would
17 then be open for further amendment.

18 DELEGATE WHEATLEY: Would this then be the
19 procedure if the committee wished to amend in effect
20 creating a few report?

21 THE PRESIDENT: I don't think we could indicate

1 any hard and fast rule to be followed. Obviously if an
2 amendment was made or series of amendments by a committee
3 that were so extensive as to constitute a new report
4 that would require study, we would have to allow time
5 for study.

6 In this particular instance, the committee
7 recommendation is one sentence and the proposed amendment
8 is simply a substitute for that one sentence. I do not
9 think we need to delay for another three days to permit
10 consideration. I would not say that that rule would be
11 followed rigidly in every instance.

12 DELEGATE WHEATLEY: Mr. President, a further
13 question of parliamentary inquiry. Several days ago I
14 raised a question as to whether the Rules Committee had
15 considered the question of re-referral and I see from the
16 report today they had not dealt with that. The reason
17 for my question is it seems much more expeditious if
18 this occasion would arise that the committee could withdraw
19 and substitute a report rather than going through the
20 fiction of amending.

21 I was just wondering now, is there a procedure

1 other than by suspension of the rules to allow a
2 committee to take back a report?

3 THE PRESIDENT: There is not. This matter was
4 considered at length by the Rules Committee. The adoption
5 of any such procedure would seriously disrupt the
6 orderly procedure of the Convention and could cause
7 interminable delay.

8 DELEGATE WHEATLEY: Thank you.

9 THE PRESIDENT: Any further questions? One
10 other matter of practice that I want to announce. Delegate
11 Malkus asked me yesterday if it would not be possible to
12 work out a procedure under which a committee recommendation
13 after its consideration by the Committee of the Whole
14 and while it was being considered by the Committee on
15 Style could be reprinted in its amended form and made
16 available to delegates.

17 This indeed can be done and will be done.
18 The amendment to Committee Recommendation GP-1 yesterday
19 will be circulated by tomorrow. We will follow the
20 practice of printing the recommendation showing any
21 language deleted by amendment as stricken through and any

1 language added by amendment in italics so that you can
2 readily see the original form and the amended form.

3 Keep in mind that this same procedure will be
4 followed by the Committee on Style in making its report
5 of changes. In order to avoid any confusion the rewrite
6 of the committee recommendation as amended by the Committee
7 of the Whole will be printed as an attachment to the
8 report of the Committee of the Whole and will be printed
9 on white paper.

10 The report of the Committee on Style, which
11 will also have language stricken through and in italics,
12 will be accompanied by a draft of the committee recommenda-
13 tions with the proposed amendments but printed on a different
14 color paper, different either from the blue or the salmon
15 or the white so that you can very readily distinguish
16 which is which.

17 The Chief Page tells me she has just distributed
18 to the desks of all delegates a copy of the proposed
19 amendment to Committee Recommendation SF-1, therefore
20 will not distribute additional copies to your desks in the
21 committee rooms but will see that all delegates not here

1 do receive copies.

2 The Chair recognizes Delegate Powers, Chairman
3 of the Committee on Calendar and Agenda.

4 DELEGATE POWERS: Mr. President, I move we
5 adjourn until 2 p.m. tomorrow.

6 THE PRESIDENT: All in favor, signify by saying
7 Aye; contrary, No. The Ayes have it, the motion is
8 carried.

9 (The Convention adjourned at 3:09 p.m.)
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Maryland Room
University of Maryland Library
College Park Md.

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3 CONSTITUTIONAL CONVENTION

4 OF THE

5 STATE OF MARYLAND
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10 Chamber of the House of Delegates

11 State Capitol

12 Annapolis, Maryland

13 November 3, 1967 - 2 p.m.
14
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16

17 HONORABLE H. VERNON ENEY,
18 PRESIDENT
19

20 Reported by:
21 W. P. Banister

1 THE PRESIDENT: The Convention will please
2 come to order.

3 The invocation today will be offered by Father
4 Gabriel Briestensky of St. Benedict's Catholic Church,
5 Baltimore, Maryland. Father Briestensky.

6 (Whereupon, the invocation was offered by
7 Father Briestensky.)

8 THE PRESIDENT: Roll call.

9 (Whereupon, a roll call was taken.)

10 THE PRESIDENT: Have all delegates answered
11 roll call? The Clerk will record the roll call. There
12 being a quorum present, the Convention is in session.

13 The Chair recognizes Delegate Powers, Chairman
14 of the Committee on Calendar and Agenda.

15 DELEGATE POWERS: Mr. President, before I move
16 for the adoption of today's calendar, I would like to
17 announce to the Convention the Committee on Calendar and
18 Agenda today has made plans for the future. We have a
19 projection of business for the Convention which will enable
20 us to adjourn sine die on December 12.

21 That will permit full debate on all matters but it will

1 necessitate that beginning this coming Tuesday the
2 Convention would convene at 10 a.m. with a recess in the
3 middle of the day for lunch, but conclude its business
4 before dinner in the evening. So that the evenings
5 can be utilized for business other than that which takes
6 place on the floor of the Convention.

7 We still hope that it will be unnecessary to
8 hold a session on Thanksgiving Day or the day after.
9 We hope that it will not be necessary to hold Saturday
10 sessions until the first Saturday in December, there
11 would be a Saturday session on the two Saturdays in
12 December before the 12th. The business for the immediate
13 future we can tell you about and we propose to announce
14 to the Convention in advance from this point forward the
15 proposed dates that we will consider various matters. Of
16 course, any delegate is on notice as soon as a committee
17 recommendation is filed that that subject matter can come
18 up any time after the third day thereafter. So that that
19 is the first notice the delegates will have.

20 In addition to that, we will announce in advance.
21 On Monday the proposal is that the agenda will include

1 the 2nd Report of the Committee on General Provisions
2 dealing with the oath.

3 On Tuesday the agenda will provide for the
4 Legislative Branch Committee Recommendation.

5 On Wednesday the Recommendation of the
6 Committee on Suffrage and Elections.

7 Further announcements will be made in advance
8 so that the delegates can keep informed as to that.

9 We do find it necessary to point out that if
10 for any reason there is any blank day, the projection will
11 be interfered with and it will be necessary to either
12 lengthen the day or to hold sessions on additional days.

13 Mr. Chairman, I move the adoption of today's
14 calendar.

15 THE PRESIDENT: Is there a second?

16 (The motion was duly seconded.)

17 THE PRESIDENT: For what purpose does Delegate
18 Malkus rise?

19 DELEGATE MALKUS: Mr. President, I arise upon
20 a point of inquiry and ask the gentleman if he will yield.

21 THE PRESIDENT: Will Delegate Powers yield to

1 to a question?

2 DELEGATE POWERS: Yes.

3 DELEGATE MALKUS: You have curtailed our
4 days to a great extent. When are we going to have the
5 opportunity to have our amendments drawn?

6 DELEGATE POWERS: Well, there is some time
7 before 10 a.m. each morning. There is a half hour in the
8 middle of the day and assuming we will customarily
9 conclude our business around 6 or 6:30 in the evening,
10 there is that evening time. The Committee on Calendar
11 and Agenda assumed that each delegate, when he undertood
12 this job, would make his work here paramount to anything
13 else and that he would be devoting full time to the
14 business of the Convention.

15 DELEGATE MALKUS: Mr. President, my next question,
16 if the gentleman will again yield, will you yield, sir?

17 THE PRESIDENT: Will Delegate Powers yield
18 to a question?

19 DELEGATE POWERS: Certainly.

20 DELEGATE MALKUS: If we do not have ample
21 time to prepare our amendments, are you going to delay

1 action on the subject matter?

2 DELEGATE POWERS: I would answer that by
3 saying that our paramount objective is to give everyone
4 a reasonable opportunity to express his opinion on any
5 subject and that if we reach a point where it appears that
6 delegates are not being afforded a reasonable opportunity,
7 something will be done so that they will be afforded such
8 opportunity.

9 DELEGATE MALKUS: Mr. President, I am very
10 grateful to the gentleman.

11 THE PRESIDENT: Thank you, Delegate Malkus.
12 The question arises on the adoption, the motion to adopt
13 the calendar. All in favor, signify by saying Aye;
14 contrary, no. The Ayes have it. The motion is adopted.
15 The Calendar is adopted.

16 The Chair recognizes Delegate Dukes.

17 DELEGATE DUKES: Mr. President, with permission
18 of the Chair, I would like to direct the attention of the
19 Convention to the right front gallery where are seated a
20 number of young ladies and gentlemen from Riverdale Hills
21 Elementary School, Prince Georges County, together with

1 some teachers and parents. We are happy to have them here.

2 In the rear center gallery four other citizens
3 of Prince Georges County in whom I have a great interest,
4 my daughter, Aurelia Ann Dukes, my son Charles Weathers
5 Dukes, my son David Lloyd Dukes, and my wife Becky.

6 In spite of the liberality of the Suffrage
7 and Elections Committee, they will not be able to vote in
8 the next election, at least three of them, but they are
9 nevertheless the principal reason I am here. (Applause.)

10 THE PRESIDENT: The Chair recognizes Delegate
11 Koss.

12 DELEGATE KOSS: I would like to acknowledge
13 the presence in the gallery of members of the ninth
14 grade civics class of Takoma Park Junior High, who are
15 here today observing the doings of our Convention with
16 their teacher, Mrs. Esther Wright.

17 THE PRESIDENT: Delighted to have you with us.
18 (Applause.)

19 Next item on the calendar is reports of other
20 standing committees. Before receiving the first report,
21 I want to call to your attention that in accordance with
the announcement made several days ago, the recommendation

1 No. GP-1 of the Committee on General Provisions as
2 amended by the Committee of the Whole attached to a report
3 of the Committee of the Whole has been reproduced. I
4 am not sure whether it has as yet been printed and circulated
5 to the delegates. It has been. It is on white paper so
6 that it will not be confused with your other documents.
7 Remember that the amendments are shown by striking through
8 the portion of the section which was deleted by amendment
9 and by showing in italics the portions which were added.

10 The committee recommendation No. GP-3. The
11 Clerk will read the recommendation.

12 MR. QUILLEN: Committee Recommendation No. GP-3,
13 by the Committee on General Provisions, Elroy G. Boyer,
14 Chairman. A recommendation that the Constitution include
15 a provision on natural resources.

16 THE PRESIDENT: The Committee Recommendation
17 No. GP-3 is referred to the Committee of the Whole.
18 Accompanying this recommendation is Committee Memorandum
19 No. GP-3, a two-page memorandum. Next report is that of
20 the Committee on Suffrage and Elections. Committee
21 Recommendation No. S&E-1.

1 MR. QUILLEN: Committee Recommendation No.
2 S&E-1, by the Committee on Suffrage and Elections,
3 Helen L. Koss, Chairman. A recommendation that the
4 Constitution include a provision on referendum.

5 THE PRESIDENT: Committee Recommendation No.
6 S&E-1 is referred to the Committee of the Whole.
7 Accompanying this recommendation is supporting memorandum,
8 Committee Recommendation No. S&E-1, a nine-page memorandum.

9 That is all of the committee reports. Before
10 coming to proposals, I call to your attention that there
11 has been filed today by Delegate Finch a memorandum
12 accompanying Delegate Proposal No. 415, a two-page
13 memorandum.

14 I also wish to call to your attention that
15 Delegate Proposal No. 421 which had a typographical
16 omission has been reprinted and is substituted in your
17 books for the previous copy. This is on the salmon paper,
18 the addition is to indicate that the proposal is submitted
19 by the sponsoring delegates by request.

20 I thought we had run out of proposals yesterday
21 but I find we had not. We now have Delegate Proposal

1 No. 444. The Clerk will read the proposal.

2 MR. QUILLEN: Delegate Proposal No. 444, by
3 Delegate Chabot. A proposal that the Declaration of
4 Rights contain a provision regarding the opportunity
5 of a citizen to challenge an unconstitutional action,
6 to read as follows:

7 THE PRESIDENT: Delegate Proposal No. 444 is
8 referred to the Committee on Personal Rights and the
9 Preamble.

10 Are there any other motions or resolutions? If
11 not, the Chair recognizes Delegate Powers.

12 DELEGATE POWERS: Mr. President, I move the
13 Convention resolve itself into the Committee of the
14 Whole for the purpose of considering general orders,
15 including Committee Recommendation No. SF-1.

16 THE PRESIDENT: Is there any debate schedule
17 to be adopted, Delegate Powers?

18 DELEGATE POWERS: No debate schedule proposed
19 by the committee.

20 THE PRESIDENT: Is there a second?

21 (The motion was duly seconded.)

1 THE PRESIDENT: The question arises on the
2 motion that the Convention resolve itself into the
3 Committee of the Whole for the consideration of general
4 orders of the day consisting of Committee Recommendation
5 No. SF-1 and Committee Report No. SF-1. All in favor,
6 signify by saying Aye; contrary, no. The Ayes have it,
7 the motion is carried.

8 (Whereupon, at 2:20 p.m. the Convention
9 resolved itself into the Committee of the Whole.)

10 (The mace was removed by the Sergeant at Arms.)

11 THE CHAIRMAN: The Committee of the Whole will
12 now come to order.

13 We will have to pause a moment to replenish a
14 tape. While we are waiting, I request the Chairman of the
15 Committee, Delegate Sherbow, to come forward.

16 Before I recognize the Chairman of the
17 Committee, I want to make one announcement that is a
18 deviation from the plan that we had a few days ago.
19 Because of the crowded condition and too much confusion
20 in the lounge, if there should be any necessity for
21 delegates to have amendments prepared during the course of

1 the debate instead of going to the lounge, go to the
2 Chief Clerk's office, the Department of Legislative
3 Reference, down the hall. Leave by the rear door and you
4 will find Dr. Phillips there. Tell him what you want and
5 he will see it is taken care of very promptly.

6 The Chair recognizes Delegate Sherbow, Chairman
7 of the Committee on State Finance and Taxation, to present
8 the Committee Recommendation SF-1.

9 DELEGATE SHERBOW: Mr.Chairman, ladies and
10 gentlemen of the committee, this recommendation is SF-1 and
11 in a moment I will discuss the amendment to it, but I would
12 ask you for the sake of avoidance of confusion, there is a
13 third or fourth paper in your book which is headed up
14 Committee Report No. 1 and the first paragraph is a report
15 on a reported omission, et cetera. Please put that aside.
16 It has nothing to do with the subject matter that comes
17 up first. Some books have it at the very beginning, it
18 might be confusing. We will take that up later.

19 THE PRESIDENT: To make that clearer to you,
20 the recommendation you are now considering is printed on
21 blue paper.

1 DELEGATE SHERBOW: Our Committee on Finance
2 and Taxation had before it a series of proposals dealing
3 in one form or another with the subject of post-audit.
4 That is, audit after the fact rather than the typical
5 executive type of audit which takes place currently in
6 various departments.

7 After the discussions began, we received a
8 number of proposals all dealing with the same subject
9 matter in one form or another. Some suggested a general
10 audit relating to finances specifying the time that they
11 should take place. Others related to the method in
12 detail by those who shall be selected and what they shall
13 do and what their qualifications shall be.

14 As you know, under the present law, we have
15 an executive audit which is under the Executive Department
16 but under the supervision and direction of the State
17 Comptroller. This is the current type of audit that you
18 know of similar to what takes place when the C.P.A. or
19 the accountants come in and check the records and cast
20 accounts and try to make sure everything is running in
21 proper order.

1 What we are talking about in this proposal
2 is an audit which would occur after the project or the
3 item in question is concluded. What we are speaking of
4 in this audit is this. It ought not to be under the Executive
5 Department. It ought not to be under the Executive
6 Department because one does not audit oneself. This is
7 a type of audit by the other branch of government which
8 might exercise this function, namely, the Legislative
9 Branch.

10 This is done in many other states. Its
11 purpose, however, we believe, in our committee, should
12 be much more than merely casting accounts after the
13 project item or event has been concluded. We believe it
14 should go in depth into a determination of performance
15 as well as financial review. Performance would mean, was
16 the money spent for what it was appropriated? Was the
17 amount spent on what they say they paid for? Or on
18 items perhaps that are totally different. Was a swimming
19 pool built instead of an addition to a school? This is
20 something like or akin to what takes place when the
21 General Accounting Office in Washington moves into a

1 department and begins its examination to find out whether
2 or not the expenditures have really been what the records
3 say they are.

4 This is a proper function of the Legislative
5 Department.

6 The first question that arises is this. If it is
7 a proper function of the General Assembly, why do we have
8 to put this into the Constitution? The Constitution, of
9 course, is not only a matter of restrictions, it is a
10 document dealing with mandates, that which you must do.
11 We believe that this is an item which should be mandated
12 in the Constitution to require the General Assembly to
13 act. True, they could act without any prodding from the
14 Constitutional Convention. The sole purpose of this
15 short, succinct article is to make it clear that they are
16 required to act.

17 It just so happens that the present General
18 Assembly has been making a study of this very same
19 subject, has been making it before this Convention
20 convened. It is a study in depth dealing not only with
21 the subject of state audit but dealing also with the manner
and method by which the General Assembly shall examine

1 state budgets, state finances and whether or not the State
2 Fiscal Research Bureau should be changed, not only as to
3 title, but as to what it in turn should do.

4 The Legislative Council has met, the Legislative
5 Council has come up with a proposed act which has already
6 been favorably approved by the Legislative Council.

7 But we believe in our committee that we still
8 should have this in the Constitution because those of
9 you who are of a practical nature, as I am sure all of
10 you are, know that sometimes some things that the
11 Legislative Councils recommend do not always go through the
12 General Assembly. We believe that while we applaud the
13 fact that the Legislative Council is moving forward,
14 nevertheless without regard to that situation, we should
15 include in the Constitution this requirement.

16 The problem then arose as to what detail
17 should be involved. We felt that all that we need to
18 say is that the General Assembly shall provide by law for
19 post-audit of state finances by persons under its control.

20 At that point I am very pleased to say that
21 others in the Convention, having examined this language,

1 felt that while they did not differ with the object, they
2 thought that there could be some changes which might be
3 useful and practical and avoid an attempt to rewrite
4 portions of the proposal here on the floor.

5 We received a call from Delegate Gallagher,
6 Chairman of the Committee on the Legislative Branch,
7 who pointed this out. Without going into the
8 details of the differences, he appointed a subcommittee of
9 five under Delegate Hanson, and I appointed a subcommittee
10 of five under Delegate Case. The group met and all of
11 the word surgery was performed across the table without
12 taking up the time of this assemblage. It is for this
13 reason that you will not have before you in a moment or
14 two SF-1 on the blue paper but you will have the amendment
15 which is on the white paper and the last four lines are
16 what will be before you. They read, "The General Assembly
17 shall provide by law for post-audit of state finances by
18 an agency of the General Assembly directed by a person
19 appointed by it and under its control."

20 You may feel there isn't any great difference
21 in the language. As to the substance, there is no

1 difference. But as the language it accomplishes these
2 purposes and I offer this only by way of explanation.

3 First it makes certain that it is the
4 General Assembly which shall provide for post-audit of
5 state finances and create the agency. It is the General
6 Assembly which will initiate by law the post-audit
7 program by an agency but that agency shall be of the
8 General Assembly, divorced completely from the executive
9 as it should be.

10 It shall be directed by a person appointed by
11 it -- it is the General Assembly -- and under its control,
12 under the control of the General Assembly. The reasons
13 for couching it this way may be summarized in this fashion.
14 We are not creating an office of such constitutional
15 dimension that an auditor may be the only person directed
16 to perform this function, because it may well be an
17 agency because you are dealing with more than the mere
18 functions of an auditor.

19 We are dealing with the matter of performance
20 as well and one who may be qualified as an auditor may
21 find of necessity that he must work with someone who is

1 qualified as an administrator, an engineer or may have
2 numerous other qualifications before he is equipped to
3 determine whether or not performance has been truly
4 carried out according to the enactment of the legislation
5 creating the project and the expenditure.

6 We believe that we should provide for it this
7 way so that it would be an office of such stature that if
8 the General Assembly sees fit to retain this
9 individual, he may be continued on by the next General
10 Assembly. But it is at their pleasure literally that he
11 serves because he is their agent and is serving under
12 them. It so happens that in the proposal which the
13 Legislative Council has now prepared for presentation to
14 the General Assembly they are asking that all of the post-
15 audit functions be transferred to the Legislative Branch,
16 which is encompassed within this requirement of this matter
17 before us now. They say likewise that the work of the
18 legislative auditor should be addressed not only to
19 agency compliance and other pertinent laws, but also to
20 general performance of the agency and suggested improvements
21 thereof.

1 Then they go further and in the Legislative
2 Council's enactment they are referring to matters relating
3 to the creation of a bureau part of which function shall
4 be that of the present Fiscal Research Bureau, others
5 dealing with the budget, another area dealing with post-
6 audit and post-audit determination of performance.

7 I point this out to you because we feel it is
8 wrong for us to go into detail in this proposal. We
9 therefore have couched it in this very general language
10 saying what we are talking about, post-audit, saying it
11 shall be under the General Assembly, saying it shall be
12 by persons under the General Assembly and saying it shall
13 be by those persons who are under the control of the
14 General Assembly. That pretty much is the basis of what
15 we are talking about.

16 We make no recommendation whatever with respect
17 to the executive type of audit, that is not before us, and
18 we are not suggesting anything about it. Mr. Chairman,
19 that is the explanation with respect to SF-1.

20 THE CHAIRMAN: Are there any questions for
21 the purpose of clarification? If not, under the rule --

1 Delegate Boyer.

2 DELEGATE BOYER: If I may, Judge, just for
3 clarification, what was the intent of the committee where
4 it quotes the agency of the General Assembly and is there
5 anything comparable that the General Assembly has any such
6 agency now?

7 DELEGATE SHERBOW: Yes, I would say the State
8 Fiscal Research Bureau, which, however, is hybrid, it
9 isn't quite under the Legislative Branch, but as encompassed
10 by the proposed act, that agency would be under the
11 legislature and would not be a person but would be a whole
12 agency.

13 DELEGATE BOYER: Thank you.
14 Just on Line 9 with the word "it," appointed by "it," I
15 take it to mean this would be appointed by it, the General
16 Assembly, not by the agency of the General Assembly.

17 DELEGATE SHERBOW: The post-audit is by an
18 agency directed by a person, the person is appointed by
19 it, the "it" is the General Assembly, but the post-audit
20 subdivision thereof may be by the one whom the General
21 Assembly has selected but he in turn may have two or three

1 people doing segments of the particular job.

2 THE CHAIRMAN: Any further questions for purpose
3 of clarification? If not, Delegate Sherbow, if you will
4 resume your desk or if you wish, use the President's
5 desk on the floor, and we will begin debate.

6 Let me call to your attention that inasmuch as
7 there was no debate schedule adopted by the Convention
8 with respect to this session, there is no limitation on
9 debate other than the 15 minutes per speaker but there is
10 also no period for general debate and therefore the
11 Committee Recommendation SF-1 is open for amendment.
12 The Chair recognizes Delegate Sherbow.

13 DELEGATE SHERBOW: Mr. Chairman, I offer
14 amendment to Committee Recommendation No. SF-1, which is
15 in the hands, I believe, of all of the members of this
16 committee. I would suggest that it be called
17 Amendment No. 1.

18 THE CHAIRMAN: The Clerk will read the amendment.
19 It has previously been circulated, it was circulated several
20 days ago, so that each delegate should have one. If any
21 of you do not have it, the Chief Page will see that you

1 have one immediately. This will be Amendment No. 1 to
2 strike out the printed words to Amendment No. blank. In
3 view of the fact that the amendment substitutes a new
4 sentence for the entire Committee Recommendation No. SF-1,
5 the Chair will rule that it is a motion to substitute.
6 The Clerk will read the motion to substitute.

7 MR.QUILLEN: Amendment No. 1 to Committee
8 Recommendation No. SF-1 by the Committee on State Finance
9 and Taxation. In Lines 10, 11, and 12, on Page 1 of
10 Committee Recommendation No.SF-1, strike out the words
11 "the General Assembly shall provide by law for post-audit of
12 state finances by persons under its control" and insert
13 in lieu thereof the words "the General Assembly shall
14 provide by law for post-audit of state finances an agency
15 of the General Assembly directed by a person appointed by
16 it and under its control."

17 THE CHAIRMAN: Is there a second to the
18 amendment?

19 (The motion was duly seconded.)

20 THE CHAIRMAN: The Chair recognizes Delegate
21 Sherbow for the purpose of debate on the amendment -- or

1 the substitute, I should say.

2 DELEGATE SHERBOW: Mr.Chairman, and members of
3 the committee, nearly everything that I would want to say
4 on this subject has been pretty well said within the
5 explanation. This is a matter of constitutional dimension
6 because it is a mandate to the General Assembly to carry
7 out this requirement that there should be post-audit
8 by this coordinate branch of the government, namely, the
9 General Assembly.

10 It fixes the responsibility, it focuses it where
11 it belongs, and at the same time it only gives the general
12 requirements and leaves the rest to statutory language,
13 to the General Assembly for ultimate passage. We believe
14 that this is something that is long overdue and should be
15 a part of the governmental processes of our state.

16 THE CHAIRMAN: The Chair recognizes Delegate
17 Koger.

18 DELEGATE KOGER: Mr. Chairman, ladies and gentle-
19 men, our new state Constitution shall remain silent on
20 many issues discussed at this Convention. Yet, no single
21 act in Maryland's fiscal process, like the budget, is of

1 greater importance than the audit. The audit definitely
2 belongs in our new Constitution. It is a must and an
3 unquestioned necessity.

4 The Finance and Taxation Committee's recommenda-
5 tion advocates no formidable change in the general
6 policy of presentday auditing, no added financial outlay
7 or dreaded duplication of services. It makes possible a
8 constitutional mandate to audit all other branches of state
9 government. Our recommendation clears up the hazy provision
10 found in Article III, Section 24. It eliminates the
11 obstacles that have bogged down the General Assembly in
12 its efforts to do something real about an audit of the
13 state finances. It makes possible an audit of the
14 Executive and Judicial Branches by an agency not subject
15 to appointment or control of either.

16 At the present time, as provided by law in the
17 Code, Article 19, Section 29, the auditor appointed by
18 the Governor and working under the direction of the Comp-
19 troller, reports only to the Governor who appoints him
20 and to the Comptroller who controls him. The exception
21 is the University of Maryland. This audit, and this audit

1 only, is reported to the legislature.

2 The Legislative Council has, after all these
3 years, recommended a check on yearly budgetary problems.
4 Yesterday the Governor endorsed it. Very good! Let's
5 make sure this shift does not become another tombstone
6 in the legislative grave yard of audit bill failures.
7 This law is just the catalyst needed making certain the
8 authority and opportunity.

9 Accounting is a system of keeping and explaining
10 records. Auditing is an official process of examination
11 and verification of records. Last year, our budget was
12 a billion dollars. Add this to the other billions of
13 bygone years, and you will realize, perhaps with some
14 shock, the full impact of the problem. Heretofore, the
15 General Assembly has had, at best, only an accounting
16 of state finances as there were no independent official
17 examination or verification of the statistics.

18 Another good reason for the Finance and
19 Taxation Committee's recommendation for an audit is it
20 permits the General Assembly to oversee the mechanics of
21 operation and to appraise the results and performances.

1 The citizens of Maryland are entitled to know the quality
2 as well as the quantity of her expenditures. The audit
3 encouched in Maryland's new Constitution makes possible
4 legislative scrutiny and the ideal system of checks and
5 balances. While at the same time, it maintains a distinct
6 separation of governmental powers.

7 Finally in the years to come, future genera-
8 tions will treasure their opportunity to know if money
9 appropriated is spent as intended, if the state gets the
10 best goods and services for its money, if all state
11 departments follow good accounting systems, if there are
12 areas of waste rather than economy, and if there is a need
13 for greater efficiency.

14 We thank you for this opportunity afforded us
15 to support this recommendation. We sincerely hope you
16 will find it possible to adopt it. Thank you.

17 THE CHAIRMAN: Is there any further discussion?
18 Delegate Adkins.

19 DELEGATE ADKINS: I should like to ask the
20 Chairman of the Committee for assurance that the term
21 post-audit is a sufficiently specific word of art so that

1 under the guise of the enabling legislation creating
2 the post-auditor it would not be possible for the legisla-
3 tive officer to engage in any manner in the budget-making
4 process heretofore normally reserved for the Chief Executive.
5 This is not in my opinion clear in the language. Unless
6 I am assured that the term post-audit is a specific word
7 of art -- nor indeed do I find it commented upon where
8 I think it quite properly should --

9 THE CHAIRMAN: Delegate Adkins, I might say
10 to you if you are asking a question, your time is charged
11 against Delegate Sherbow if he responds but if you debate
12 the time will be charged against you.

13 DELEGATE ADKINS: I will consider it debate but
14 I would like to get assurance on this point.

15 THE CHAIRMAN: This is the Committee of the
16 Whole. You may proceed.

17 DELEGATE ADKINS: I should like to be assured.
18 In short, while I am completely in favor of legislative
19 post-audit responsibilities, I should like to be assured
20 that the term post-audit is not a Trojan horse for the
21 interposition of legislative responsibility in the area

1 of the budget-making process. With that assurance, I
2 shall be prepared to vote for the proposal as amended.

3 THE CHAIRMAN: The Chair recognizes Delegate
4 Sherbow.

5 DELEGATE SHERBOW: Delegate Adkins, the term
6 post-audit is as far as I know a word that has been used
7 as a word of art not only by the Maryland Legislative
8 Council but elsewhere in other statutes. In order to make
9 doubly clear the point which you are raising, we will,
10 with the permission of whoever will have the authority
11 to give that permission, add a memorandum to our commentary
12 in which we point out that we are speaking of post-audit
13 as we understand it and the very essence of what we
14 propose is that it not impinge on the functions of the
15 executive. Your understanding is correct. It relates only
16 to post-audit and nothing to do with the executive function.

17 THE CHAIRMAN: I take it to express it another
18 way you are saying it has to do with audit of the expenditure
19 after the expenditure and not before?

20 DELEGATE SHERBOW: Exactly.

21 THE CHAIRMAN: Any further debate? Delegate

1 Fornos.

2 DELEGATE FORNOS: Would the Chairman of State
3 Finance and Taxation yield for a question?

4 DELEGATE SHERBOW: Certainly.

5 DELEGATE FORNOS: Do you mean when in Line 9
6 you say "a person appointed by the General Assembly" that
7 you are precluding the General Assembly from electing
8 such an auditor among themselves?

9 DELEGATE SHERBOW: Delegate Fornos, when you say
10 among themselves, if you mean selecting somebody from their
11 own body, this, of course, is a matter that I can't --

12 DELEGATE FORNOS: By majority vote of each
13 House.

14 THE CHAIRMAN: I don't think your question was
15 on the microphone, Delegate Fornos. Would you repeat it?

16 DELEGATE FORNOS: You mean selection of a state
17 auditor through the means of a majority vote of each House
18 of the General Assembly?

19 THE CHAIRMAN: Delegate Sherbow.

20 DELEGATE SHERBOW: It is our understanding
21 it is clear as a bell that the General Assembly when it

1 would act would provide by law that this would require
2 a constitutional majority of both Houses first to pass the
3 law, which would have to be signed, of course, by
4 the Governor, when it says appointed by the General
5 Assembly, this would require a majority of each House of
6 the General Assembly.

7 THE CHAIRMAN: Any further discussion? The
8 question arises on the motion to substitute for Committee
9 Recommendation SF-1 the provision "the General Assembly
10 shall provide by law for post-audit of state finances by
11 an agency of the General Assembly directed by a person
12 appointed by it and under its control".

13 In order to avoid any misunderstanding, the
14 Parliamentarian suggests that I call to your attention
15 that if anyone desires to offer amendments to the sub-
16 stitute, now is the appropriate time to offer such amendments
17 and not after the substitute shall have been voted upon.
18 Is there any further discussion of the motion to
19 substitute or any amendments to be offered to the sub-
20 stitute? Are you ready for the question? A vote Aye is
21 a vote in favor of the substitution, a vote No, a vote

1 against the substitution. All in favor, signify by saying
2 Aye; contrary, No. The Ayes have it. The motion is
3 carried and the substitution is made.

4 The question now arises on Committee Recommendation
5 tion No. SF-1 as amended by the substitution. Is there
6 any further discussion? Are you ready for the
7 question? A vote Aye is a vote in favor of Committee
8 Recommendation SF-1 as amended by the substitution by
9 Amendment No. 1. All in favor, signify by saying Aye;
10 contrary, No. The Ayes seem to have it. The Ayes have it.
11 The motion is carried. The Committee Recommendation No.
12 SF-1 is approved and will be so reported to the
13 Convention.

14 DELEGATE SHERBOW: Mr. Chairman, I rise on,
15 I suppose what would be, a matter of personal privilege.
16 I would like the record of this committee and of this
17 Convention to show that Delegate Koger had introduced the
18 earliest proposal relating to post-audit. He has worked
19 on it day in and day out. We have not had a session but
20 that he has produced some item of interest relating to this
21 subject matter and on behalf of our committee and myself
I want publicly to express to him our appreciation.

1 for the service he has rendered in connection with this
2 particular matter. (Applause.)

3 THE CHAIRMAN: The next item on the agenda
4 of the Committee of the Whole is Committee Report No.
5 SF-1. The Chair recognizes Delegate Sherbow, Chairman
6 of the Committee on State Finance and Taxation and
7 requests he come forward to the reading desk.

8 DELEGATE SHERBOW: Mr. Chairman, ladies and
9 gentlemen of the Committee, this is a report where all
10 we ask is that it be received, accepted and so placed
11 in the archives that the fact that something is being
12 omitted will be available to those who may be seeking
13 knowledge of why it was omitted and would clarify any
14 open question that might hereafter arise with respect to
15 this subject matter.

16 This requires that we go into a little bit of
17 history. We have in the present Constitution a requirement
18 that you now cannot, that nothing shall exempt the salaries
19 or compensation of any judge or other public officer from
20 the operation of the general liability of a non-discriminatory
21 tax upon income.

1 That got into the Constitution in this fashion.
2 Maryland adopted a state income tax. When this state
3 income tax was adopted, it was provided therein that all
4 persons within the classes subject to the exemption and
5 exceptions would all be liable for the payment. You know
6 that when April 15 comes around.

7 However, we had another provision in our
8 Constitution which said that you cannot diminish the
9 salary of any judge during his term of office. So the
10 question arose, are you diminishing the salary of a judge
11 by requiring him to pay a state income tax?

12 The rule had been that you really were deducting
13 something from a judge's salary which was obvious but that
14 you were literally reducing it in violation of the law.
15 The Supreme Court in the case of Evans versus Gore, which
16 is cited on the Committee Report, so held.

17 At or about that time the Chief Judge of the
18 Supreme Bench of Baltimore, the late Honorable Samuel K.
19 Dennis, whom most of us or all of us really remember with
20 deep affection and regard, wanted to find out if this
21 applied to judges. He instituted a suit against the then

1 Comptroller, Mr. Gordy, to test it out. When that case got
2 to the Court of Appeals, the Court of Appeals of Maryland
3 relied upon the Supreme Court case and ruled that it was
4 a diminution of the judge's salary in violation of his
5 constitutional rights. Whereupon the people rose up and
6 said wherefore is he any different from the rest of us?
7 They passed this constitutional amendment which I just
8 read and said that it was all right to apply this tax
9 literally to everybody who is in the proper classification.

10 Thereafter, as sometimes happens, the Supreme
11 Court in a later decision ruled that what the Maryland
12 amendment said was really law anyway in the case of
13 O'Malley versus Woodrough in 307 US 277 and they expressly
14 overruled the earlier case of Evans versus Gore.

15 That left us then in this situation. You are
16 not reducing a judge's salary or any other fixed salary
17 of a state official by this kind of tax. You don't
18 need a constitutional provision to say that this is so
19 because this is the law. It is applicable to everybody
20 and since the Maryland Court of Appeals had relied on this
21 case, which the Supreme Court later overruled, we reached

1 the conclusion, which we do not find to be one even in
2 the gray area, we say it is perfectly clear, that we don't
3 need this provision in the Constitution.

4 However, for fear that if we left it out, some-
5 body might raise the point and say this Convention met,
6 considered the matter, and left it out because they didn't
7 think that such salary should be so reduced, we offer
8 this report to make it perfectly clear that it is our
9 intention not in any way to upset the present prevailing
10 law, and that is everybody is going to be treated alike
11 where these taxes are concerned, whether your salaries
12 are fixed, whether they are not subject to diminution,
13 taxes are taxes, and all will have to pay them within the
14 requirements of the law.

15 What we are asking is that this report be
16 accepted and adopted and filed in the records of this
17 Convention.

18 I so move, Mr. Chairman.

19 THE CHAIRMAN: Are there any questions for
20 purposes of clarification? Is there a second to the
21 motion? This is a committee report and needs no second.

1 Any further question? Further discussion? Ready for
2 the question? The question arises on the motion to approve
3 Committee Report No.SF-1. A vote Aye is a vote in favor
4 of the approval of the report. A vote no, against.
5 All in favor, signify by saying Aye; contrary, no. The
6 Ayes have it. So ordered. The report is approved.
7 Thank you, Delegate Sherbow.

8 DELEGATE SHERBOW: Thank you, Mr.Chairman.

9 THE CHAIRMAN: The Chair recognizes Delegate
10 Powers.

11 DELEGATE POWERS: Mr. Chairman, I move the
12 Committee of the Whole rise and report to the Convention
13 with respect to its action concerning Committee Recommenda-
14 tion No. SF-1 and Committee Report No.SF-1.

15 THE CHAIRMAN: Is there a second?

16 (The motion was duly seconded.)

17 THE CHAIRMAN: The question arises on the motion
18 to rise and report to the Convention, that the
19 Committee of the Whole has considered Committee Recommenda-
20 tion SF-1 and recommends its adoption with amendments and
21 that the Committee of the Whole has considered Committee

1 Report No. SF-1 and recommends its adoption by the
2 Convention. All in favor, signify by saying Aye; contrary,
3 No. The Ayes have it. So ordered.

4 (Whereupon, at 3 p.m. the Committee of the
5 Whole rose, and the Convention reconvened.)

6 (The mace was replaced by the Sergeant at Arms.)

7 THE PRESIDENT: The Convention will now come to
8 order. On behalf of the Committee of the Whole, I
9 report to the Convention that the Committee of the
10 Whole has had under consideration Committee Recommendation
11 SF-1 and recommends that it be adopted with amendments
12 and that the Committee of the Whole has had under considera-
13 tion Committee Report No. SF-1 and recommends that it be
14 adopted.

15 The question arises on the Report of the Committee
16 of the Whole. The Chair recognizes Delegate Powers for
17 the purpose of making the motion.

18 DELEGATE POWERS: Mr. President, I move the
19 report of the Committee of the Whole be adopted.

20 THE PRESIDENT: Is there a second?

21 (The motion was duly seconded.)

1 THE PRESIDENT: Any discussion? Are you
2 ready for the question? All in favor, signify by saying
3 Aye; contrary, No. The Ayes have it. The Report of the
4 Committee of the Whole is adopted.

5 The Committee Recommendation SF-1 and the
6 report of the Committee of the Whole with respect thereto
7 is referred to the Committee on Style, Drafting and
8 Arrangement.

9 I have no announcements to make other than
10 those which have already been made. Are there any announce-
11 ments by committee chairmen? Delegate Kiefer?

12 DELEGATE KIEFER: Mr. President, the Committee
13 on Personal Rights and the Preamble will meet 15 minutes
14 after this meeting adjourns.

15 THE PRESIDENT: Delegate Mudd.

16 DELEGATE MUDD: Mr. President, the Committee
17 on the Judicial Branch will meet Monday morning at 11 a.m.

18 THE PRESIDENT: Delegate Moser.

19 DELEGATE MOSER: Mr. President, the Committee
20 on Local Government will meet immediately after this
21 session.

1 THE PRESIDENT: Delegate Sherbow.

2 DELEGATE SHERBOW: Mr. President, the Committee
3 on Finance and Taxation will meet immediately after this
4 session is recessed to continue what we were working on
5 today.

6 THE PRESIDENT: Any further announcements by
7 committee chairmen? Delegate Gallagher.

8 DELEGATE GALLAGHER: Mr. President, the Committee
9 on the Legislative Branch will meet at 2 o'clock Monday
10 afternoon. I remind the committee members that they must
11 have their minority reports completed by 5 o'clock
12 Monday afternoon and the staff of the committee is available
13 after the session today and all day Monday to assist with
14 those minority reports.

15 THE PRESIDENT: Delegate Morgan.

16 DELEGATE MORGAN: Mr. President, the Committee
17 on the Executive Branch is temporarily stalled and we will
18 meet on Monday at 1 o'clock hopefully to break the
19 impasse that we are now in.

20 THE PRESIDENT: Any further announcements by
21 committee chairmen? Delegate Boyer.

1 DELEGATE BOYER: Mr. President, the Committee
2 on General Provisions will meet 15 minutes after this
3 Convention adjourns. We will meet again on Monday at
4 1 o'clock. Thank you.

5 THE PRESIDENT: Delegate Penniman.

6 DELEGATE PENNIMAN: Mr. President, the
7 Committee on Style will meet at 2:30 Monday.

8 THE PRESIDENT: Any further announcements by
9 committee chairmen? Delegate Harry Taylor.

10 DELEGATE HARRY TAYLOR: I rise to a point of
11 personal privilege.

12 THE PRESIDENT: State your privilege.

13 DELEGATE HARRY TAYLOR: On October 31 I made
14 some brief remarks that had no historical significance
15 but in checking the record, I found that my friend Delegate
16 Lloyd Taylor had been blamed for these remarks. I wanted
17 to bring to the attention of whoever has the task of
18 distinguishing between the two Taylors here that it might
19 be helpful for them to know Harry Taylor is the one that
20 sits closest to the exit.

21 THE PRESIDENT: Delegate Harry Taylor, it will

1 be very helpful to us if you could leave a memorandum
2 with one of my secretaries of the page where this occurs
3 and we will see it is corrected. Any further announcements
4 by other delegates? One final word then before recognizing
5 Delegate Powers. I call to your attention his remarks
6 earlier as to the schedule for projected sessions of the
7 Convention next week. And remind each of you what you are,
8 I am sure, very much aware of. That is that almost every
9 committee has now completed its deliberations and is
10 working this weekend on the committee recommendations and
11 the accompanying memoranda.

12 I urge all members of those committees who are
13 even toying with the idea of filing a minority report
14 to work on it tomorrow and Sunday so that it can be
15 completed and be presented at the same time hopefully
16 as the majority recommendation of the committee. To the
17 extent that we are able to do so on short notice, we will
18 have every possible assistance available for you by
19 members of the professional staff and stenographic assis-
20 tance..

21 In addition let me say to particularly the

1 delegates who are members of the Committee on Style,
2 Drafting and Arrangement, but as well to the Chairmen of
3 the other committees, I think you must from now on consider
4 not only that your assignment to the Committee on Style is
5 your primary assignment but is your only committee
6 assignment. It is quite obvious from the schedule that
7 has been worked out that the Committee on Style will have
8 to be meeting at night. Other committees will also have to
9 be meeting at night. You can't have one body in two
10 places at the same time. Therefore, will the members of
11 the Committee on Style consider themselves divorced
12 completely from their other committees at any time the
13 Committee on Style is meeting.

14 The Chair recognizes Delegate Powers.

15 DELEGATE POWERS: Mr. President, I move we
16 adjourn until 4 p.m. on Monday.

17 THE PRESIDENT: All in favor, signify by
18 saying Aye; contrary, No. The Ayes have it. It is so
19 ordered.

20 (The Convention adjourned at 3:10 p.m.)
21 -----

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2
3 CONSTITUTIONAL CONVENTION
4 OF THE
5 STATE OF MARYLAND
6
7

8 -----
9 Chamber of the House of Delegates
10 State Capitol
11 Annapolis, Maryland
12 November 6, 1967 - 4:00 p.m.
13 -----
14
15

16 HONORABLE H. VERNON ENEY,
17 PRESIDENT
18

19
20 Reported by:
21 C. J. Hunt

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1 THE PRESIDENT: The Sergeant at Arms will clear
2 the aisles and close the doors.

3 The Convention will please come to order.

4 The invocation today will be offered by the
5 Reverend Father Francis Veith, of St. Michael's Catholic
6 Church, St. Mary's County. Father Veith.

7 (Whereupon, the invocation was offered by the
8 Reverend Veith.)

9 THE PRESIDENT: Roll call.

10 (Whereupon, the roll call was taken.)

11 Have all delegates answered the roll call? The
12 Clerk will record the roll call.

13 There being a quorum present, the Convention is
14 in session.

15 The Chair recognizes Delegate Powers, Chairman
16 of the Committee on Calendar and Agenda.

17 DELEGATE POWERS: Mr. President, I move today's
18 Calendar be adopted.

19 THE PRESIDENT: Is there a second?

20 (Whereupon, the motion was seconded.)

21 All in favor, signify by saying Aye; contrary,

1 No. The Ayes have it. The motion is carried. The Calen-
2 dar is adopted.

3 I would like to recognize the presence in the
4 gallery of fourth and fifth grade students from Parkway
5 Elementary School of Frederick County, who are attending
6 the General Session this afternoon. They are in the gal-
7 lery now. (Applause.)

8 I would like also to announce that the Fifth
9 Grade of School No. 148 from Baltimore City visited
10 committee hearings and attended a showing of the movie at
11 the Convention this morning.

12 Before moving on to Reports, may I ask that you
13 turn to your books and make a slight typographical cor-
14 rection in Committee Memorandum S and E 1, Suffrage and
15 Elections, on Page 3, Line 5, the word "opinion" should
16 read "option".

17 That is Page 3, Line 5, Committee Memorandum
18 S and E 1, change "opinion" to "option".

19 Reports of other standing committees.

20 Committee Recommendation JB-1. The Clerk will
21 read the recommendation.

1 MR. QUILLEN: Committee Recommendation No. JB-1,
2 by the Committee on the Judicial Branch, A recommendation
3 that the Constitution contain an Article V establishing
4 the Judicial Branch of the State Government, the Article
5 to read as follows.

6 THE PRESIDENT: Committee Recommendation No.
7 JB-1 is referred to the Committee of the Whole.

8 This has not yet been duplicated, or the dup-
9 lication is not complete. It will be finished and in your
10 possession before the day is over. Will you please be
11 sure that you have this Recommendation before the day is
12 out, because I understand that in all probability this
13 Recommendation may be on the Calendar for debate on Thurs-
14 day of this week.

15 The Recommendation embraces a complete judicial
16 Article of the proposed Constitution.

17 You will also have in conjunction with the
18 Committee Recommendation JB-1 Committee Memorandum JB-1 in
19 support of Committee Recommendation JB-1.

20 Both will be reproduced and here I think before
21 the session ends this afternoon.

1 We also have some minority reports.

2 Minority Report LB-1A. The Clerk will read
3 the Report.

4 MR. QUILLEN: Minority Report LB-1A, by
5 Delegates Hanson, Miller, Sollins and Gill, of the Commit-
6 tee on the Legislative Branch, A Minority Report that
7 Article III of the new Constitution provide for a unicameral
8 legislature composed of one hundred members elected from
9 single member districts to read as follows.

10 THE PRESIDENT: Minority Report LB-1B. The
11 Clerk will read the Report.

12 MR. QUILLEN: Minority Report No. LB-1B, by
13 Delegates Clark, Hanson, Hopkins and Sollins of the Com-
14 mittee on the Legislative Branch, A Minority Report that
15 Section 3.04 of the new Constitution provide for a Senate
16 of forty members and a House of Delegates of eighty mem-
17 bers, to read as follows.

18 THE PRESIDENT: Minority Report LB-1C. The
19 Clerk will read the Report.

20 MR. QUILLEN: Minority Report No. LB-1C, by
21 Delegates Gilchrist, Bushong, Anderson, Linton, Gleason, Della

1 of the Committee on the Legislative Branch, A Minority
2 Report that Section 3.04 of the new Constitution provide
3 for a General Assembly with a total membership of one hun-
4 dred eighty in the Senate and the House of Delegates, to
5 read as follows.

6 THE PRESIDENT: Minority Report LB-1D. The
7 Clerk will read the Report.

8 MR. QUILLEN: Minority Report No. LB-1D, by
9 Delegates Gleason, Linton, Della, Peters, A Monority
10 Report that Section 3.04 of the new Constitution permit the
11 General Assembly to set its own size, to read as follows.

12 THE PRESIDENT: Minority Report LB-1E. The
13 Clerk will read the report.

14 MR. QUILLEN: Minority Report No. LB-1E, by
15 Delegates Hopkins, Sollins, Hanson and Clark, A Minority
16 Report that Section 3.05 of the new Constitution not con-
17 tain a district residence requirement for running for the
18 General Assembly, to read as follows.

19 THE PRESIDENT: Minority Report LB-1F. The
20 Clerk will read the Report.

21 MR. QUILLEN: Minority Report No. LB-1F, by

1 Delegates Bard, Gleason, Miller, Sollins and Hanson,
2 A Minority Report that Section 3.12 of the new Constitution
3 provide for legislative termination of sessions of the
4 General Assembly, to read as follows.

1 THE PRESIDENT: The six Minority Reports Nos.
2 LB-1A to LB-1F, inclusive, all pertain to Committee
3 Recommendation LB-1. They have not yet been printed, are
4 presently in the print shop. They will be concluded some-
5 time this evening. It may not be possible to distribute
6 them to you this evening. If so, they will be on your
7 desks in your committee rooms, either tonight late or
8 early tomorrow morning. Because Committee Recommendation
9 LB-1 will be on the Agenda the first thing tomorrow morning,
10 each of these minority reports will be presented by the
11 minority spokesman of the various groups at the proper
12 time in the course of the debate tomorrow. They will be
13 accompanied at that time by the necessary printed amend-
14 ments. The amendments will not be circulated until they
15 are actually offered.

16 In addition to these memoranda, there is also
17 presently in the print shop galley proofs of an article on
18 unicameralism by Dr. John Michener, which was prepared
19 for the Constitutional Convention Commission, and which is
20 a part of Volume II of the Reports of that Commission.
21 Xerox copies of this Report were heretofore made available

1 to all the members of the Committee on the Legislative
2 Branch, and copies of the Report are also in the library.
3 Because the subject is one which will be debated tomorrow,
4 we thought it best to try to reproduce copies so that each
5 of you could have a copy on your desk if you want it.
6 Problems of reproduction are such, the lateness of reports
7 coming in, that we could not conclude it in time to give
8 it to you this afternoon.

9 There are no proposals this afternoon. Are
10 there any other motions or resolutions?

11 (There was no response.)

12 Delegate Vecera?

13 DELEGATE VECERA: Mr. President, ladies and
14 gentlemen of the Convention, I would like at this time to,
15 if in proper order, I would like to move at this time that
16 the Committee of the Whole not be adjourned tomorrow, due
17 to the City elections, all day tomorrow. I think it would
18 place an undue hardship on many members that are of the
19 City Delegation, that the Committee therefore not be ad-
20 journed tomorrow.

21 THE PRESIDENT: I don't understand. You say it

1 not be adjourned?

2 DELEGATE VECERA: Not be debated, excuse me.

3 THE PRESIDENT: I think the motion is out of
4 order at this time. I will recognize you at the time later
5 in the program after we finish the consideration of the
6 general orders of the day.

7 DELEGATE VECERA: Thank you, Mr. President.

8 THE PRESIDENT: Are there any other motions or
9 resolutions?

10 (There was no response.)

11 If not, the Chair recognizes Delegate Powers.

12 DELEGATE POWERS: Mr. President, I move the
13 Convention resolve itself into the Committee of the Whole
14 for the purpose of considering the general orders of the day.

15 THE PRESIDENT: Is there a second?

16 (Whereupon, the motion was seconded.)

17 Any discussion? All in favor, signify by say-
18 ing Aye; contrary, No. The Ayes have it. It is so ordered.

19 (Whereupon, at 4:17 p.m., the Convention re-
20 solved itself into the Committee of the Whole.)

21 (The mace was removed by the Sergeant at Arms.)

1 THE CHAIRMAN: The Committee of the Whole will
2 now come to order. It will have for consideration the
3 Committee Recommendation No. GP-2, filed on November 2,
4 1967. The Chair recognizes Delegate Boyer, Chairman of the
5 Committee on General Provisions, and requests he come for-
6 ward to the Reading Clerk's desk.

7 DELEGATE BOYER: Mr. President?

8 THE CHAIRMAN: Delegate Boyer.

9 DELEGATE BOYER: Ladies and gentlemen of the
10 Committee, we have before us today for consideration as the
11 Committee of the Whole GP-2, the General Provisions
12 recommendation on the section concerning oaths. I sin-
13 cerely hope that it will not be as controversial as the
14 last non-controversial item, GP-1. Perhaps the action
15 by the Supreme Court today will smooth some of the rough
16 waters.

17 At this stage, Mr. Chairman -- Mr. President --
18 Mr. Chairman, yes -- the General Provisions Committee
19 would like to pay special recognition and gratitude to the
20 subcommittee who worked on oaths, headed by Delegate Blair,
21 Delegates Singer, Lord and Wheatley. It has been our

1 custom in the General Provisions Committee to thoroughly
2 discuss each item, but because of the many ramifications
3 of each item and the variety of items referred to us, we
4 have thought it more expedient to delegate into special
5 subcommittees some specialization, and this is the purpose
6 of the Subcommittee on Oaths. After the Subcommittee made
7 its report back to the full Committee, of course we
8 then had full discussion; and I am very happy to report
9 to my knowledge there are no minority reports on this
10 section.

11 Your Committee on General Provisions considered,
12 we thought, every aspect of the oath. We considered that
13 the judicial meaning of the phrase "an office of profit
14 or trust" in many cases were in these terms defined. The
15 Committee considered the use of the words "swear or affirm",
16 and we felt that the authority for usage is in the Cons-
17 titution of the United States, Article VI, in the presen-
18 tation oath of office. The affirmation was initially
19 designed to rectify the practical injustice that resulted
20 to suitors where witnesses, who possessed a prerequisite
21 belief in God were nevertheless prevented from testifying

1 because of their conscientious scruples against taking
2 a solemn oath.

3 The English Parliament and the Legislatures
4 of many of the American States enacted legislation to
5 enable those believers, conscientiously scrupulous of
6 taking the oath and to qualify therefor as witnesses by
7 affirmation.

8 State constitutional provisions similarly
9 provided for the affirmation as an oath substitute in a
10 variety of instances.

11 The oath is identical, as we present it, with
12 the draft and existing Constitution, in the essential
13 areas to support the Constitution of the United States,
14 to be faithful and bear true allegiance to the State of
15 Maryland, and to support the Constitution and laws thereof.

16 The proposed oath that we present to you differs,
17 however, from the existing Constitution only in the last
18 part, where it delineates, or deletes the provision that a
19 Governor, a Senator, a member of the House of Delegates
20 or Judge will not directly or indirectly receive profits
21 from any part of the profits of any other office during

1 his term of acting in such capacity.

2 This was deleted because it was not felt
3 appropriate for an oath of office.

4 The Committee noted that the prohibition as
5 to the members of the General Assembly has been retained in
6 Draft Section 3.09. The Committee further recommends
7 that the provision contained in Article 35 of the Declara-
8 tion of Rights pertaining to plurality of office be
9 deleted, and is of the opinion that the matter should be
10 left to the legislature, or elsewhere in the Constitution
11 in the area pertaining to qualification for office or con-
12 flict of interest.

13 The final change recommended by your Committee
14 was the omission from the Draft Constitution of the words
15 "or political test", where the phrase reads, "no other
16 oath or political test shall be required".

17 This was done because of the ambiguity of the
18 construction that might be given to such language. Does
19 age, qualification, commission of crime, declaration of
20 party registration, as a Democrat or Republican, do any
21 or all of these things constitute a political test, and it

1 was the opinion of a representative of the Attorney-
2 General's office who testified in connection with oaths that
3 there could be some question raised as to the construction
4 of this provision.

5 The Court of Appeals has held that the Ober Law,
6 a loyalty law, does not constitute an oath; although the
7 Draft Constitution does not include Section 7 of the
8 present Constitution, your Committee was of the opinion
9 that such a statement should be contained in the Constitu-
10 tion in the event of refusal or neglect to take an oath
11 of affirmation. This is the last paragraph of the blue-
12 colored recommendation.

13 This would establish the time when the office
14 would be vacated and how it should be filled. The pro-
15 vision that it should be filled as prescribed by law would
16 include constitutional as well as statutory fiat, and
17 finally, your Committee reviewed the historical transition
18 from belief in the Supreme Being and theistic principles
19 relating to oaths to the present interpretation enunciated
20 and
under Schowgurow/ other cases. After reviewing the age-old
21 battle between personal liberty and governmental authority

1 your Committee concluded that an oath does have a proper
2 place in our Constitution.

3 We felt that freedom was fragile, and it should
4 be handled with prayer. Your Committee recommends the
5 resolution for favorable consideration.

6 THE CHAIRMAN: Are there any questions for pur-
7 poses of clarification? Delegate Sickles?

8 DELEGATE SICKLES: I wonder if the Chairman of
9 the Committee would explain to the Committee who would be
10 covered, when it says, "every person elected or appointed
11 to any office of profit or trust", under the Constitution
12 or laws of this State specifically; specifically I am
13 concerned as to whether this oath would be applied to office-
14 holders on the municipal level, county level, bi-county
15 agency level.

16 DELEGATE BOYER: Delegate Sickles, I don't think
17 that the General Provisions Committee really came to any
18 concrete conclusion in answer to your question. It would
19 be my thought, humbly, that this would apply to any office,
20 elected official, for an office of profit or trust or
21 appointed official for such, on a Statewide level. I

1 probably stand subject to correction, but this is just my
2 thought. I think this is the State Constitution. I think
3 this would probably be my second guess on it.

4 THE CHAIRMAN: Any further questions for pur-
5 poses of clarification? Delegate Rybczynski?

6 DELEGATE RYBCZYNSKI: Mr. Chairman, at what
7 point, or let me ask you this question a little differ-
8 ently, was there a time when the oath contained a reference
9 to the Deity?

10 DELEGATE BOYER: Not in our consideration, we
11 didn't ever hold that per se.

12 DELEGATE RYBCZYNSKI: In the history of the
13 State, has the oath ever referred to the Deity?

14 DELEGATE BOYER: My recollection on research
15 is that Maryland's maiden Constitution was silent on
16 this point. I am not quite sure of what the 1864 Consti-
17 tution had. I don't know.

18 DELEGATE RYBCZYNSKI: If I may continue, in the
19 Commission Report, on Page 303, in Section 6 there is no
20 reference to the Deity, and I was wondering if that is
21 because it was never referred to in the first place, the

1 Deity was never referred to in the first place or because
2 it has been deleted by case law.

3 DELEGATE BOYER: Delegate Rybczynski, I truly
4 don't know the answer to it. I can't say that it ever
5 has or has not been in any previous constitution. I see
6 Delegate Sickles rising. I wonder if he could clarify it.

7 THE CHAIRMAN: Delegate Sickles?

8 DELEGATE SICKLES: It is my understanding the
9 current Constitution requires one who takes an oath must
10 believe in the existence of God, but as a result of the
11 Torcaso case this was held to be unconstitutional. Some-
12 body is shaking their head.

13 THE CHAIRMAN: Delegate Henderson?

14 DELEGATE HENDERSON: I would like to ask, right
15 along the line that has been suggested here, whether the
16 Committee has the view that the non-believer, one who does
17 not believe in God, which was the Torcaso case, would be
18 permitted to assume office without taking this oath?

19 DELEGATE BOYER: I have an answer to that, but
20 I am going to yield if I may, Mr. Chairman, to Delegate
21 Blair, who was the Chairman of this Subcommittee.

1 DELEGATE BLAIR: Mr. Chairman, I think that can
2 best be answered by the basis of the affirmation, substi-
3 tuted for the oath. I has been construed by an opinion of
4 the Attorney General actually that the affirmation would
5 substitute for the oath, and that a belief in God would not
6 be necessary.

7 The answer to the previous question on Article
8 37, I think, of the Declaration of Rights, would indicate
9 that no religious test ought ever to be required as a
10 qualification for any office of profit or trust in this
11 State, other than a declaration of belief in the existence
12 of God, nor shall the legislature prescribe any/oath of
13 office other than the oath prescribed by this Constitution.

14 That was declared unconstitutional under the
15 case that you tried, I think, Judge Henderson.

16 DELEGATE HENDERSON: That was overruled.

17 DELEGATE BLAIR: That was overruled. That par-
18 ticular provision was declared unconstitutional. That is
19 the only reference I have come across, with regard to God
20 being a part of the prescription for oath, but the Attorney
21 General has ruled, and I think it is an acknowledged

1 concept, that the United States Constitution, Article VI,
2 prescribes that affirmation shall be used in the presenta-
3 tion oath. It historically was used for the benefit of
4 those people who actually believed in the Divinity and the
5 theastic concept of philosophy, but who did not choose
6 to take an oath because of religious qualms of conscience
7 about swearing but actually believed in the Divinity, and
8 therefore it was approved and put into the Constitution of
9 the United States. However, it has continued under the
10 same concept and would be acknowledged even though and
11 to reply to your answer as to whether or not there was
12 actually a belief in Divinity, would be substituted for and
13 would be considered as a part of the oath, without the
14 belief in a Divine Being.

15 THE CHAIRMAN: Any further questions? Delegate
16 Henderson?

17 DELEGATE HENDERSON: Along that same line, it
18 is my understanding that the affirmation was substituted
19 for the oath, not for the benefit of the non-believer, but
20 those who were so conscientiously scrupulous that they
21 declined, or they thought it was wrong to mention the name

1 of the Maker.

2 Now, if it is the Committee's opinion that a
3 non-believer would be eligible to office under this phrase,
4 as you have drawn it, I suggest that should be stated in
5 the comment at least. I don't find anywhere a clear state-
6 ment to that effect, because it may be of the utmost im-
7 portance when this case, as undoubtedly will come before
8 the court and particularly the Supreme Court for interpre-
9 tation.

10 THE CHAIRMAN: So that the transcript may be
11 clear on this point, I would like to ask Delegate Boyer as
12 Chairman of the Committee to state unequivocally if he can
13 whether the opinion of the Committee was, as Judge Hender-
14 son just indicate, namely, that the oath could be taken,
15 the oath or affirmation, could be taken by the person who
16 did not believe in a Supreme Being, and that belief in a
17 Supreme Being was therefore not under this section at least
18 a qualification for office.

19 DELEGATE BOYER: There are no discriminations
20 in the section as we present it that would allow special
21 privileges to any particular class, and it would have to be

1 taken, in our opinion, by everyone.

2 THE CHAIRMAN: I am not sure that is an answer
3 to the question of the Chair. The question is, did the
4 Committee on General Provisions intend by this proposal that
5 a person who did not believe in a Supreme Being could never-
6 theless take the oath or affirmation required by this sec-
7 tion and could nevertheless hold an elected or appointive
8 office under the Constitution and laws of this State.

9 DELEGATE BOYER: Yes, they did consider it, and
10 yes, they can hold office. There are two questions there.

11 THE CHAIRMAN: Are there any further questions
12 for purposes of clarification? Delegate Blair?

13 DELEGATE BLAIR: Mr. Chairman, I would like to
14 call the attention of the Committee of the Whole to the
15 very well written opinion of the Attorney General's Office,
16 which was dated November 2, 1965. The opinion was writ-
17 ten by Morton Sachs, an Assistant Attorney General, fol-
18 lowing the Schowgurow case, and it is a very excellent
19 piece of work, which covers the whole philosophy of what
20 is under discussion. That is, the background of the oath
21 and the transition from the belief in God to the present

1 concept, as defined in Schowgurow and Torcaso, and it would
2 be my belief, after you read this particular opinion, and
3 it can be obtained from the Attorney General's Office,
4 and I will be pleased to furnish every member here who will
5 ask for a copy with a copy of it, but I think it will com-
6 pletely answer all the questions that have been requested of
7 the Chairman, Mr. Boyer, with relationship to the applica-
8 bility of the affirmation, and whether or not as a substitute
9 for the belief in a Divine Being. It is covered in this
10 particular article, and the answer is in the affirmative.

11 THE CHAIRMAN: I think for purposes of clarifica-
12 tion of the record, Delegate Blair, it might be desirable if
13 you would indicate what you meant by your last statement,
14 that the answer is in the affirmative.

15 DELEGATE BLAIR: That the affirmation would en-
16 compass an oath taken by a atheist.

17 THE CHAIRMAN: In other words, that the oath, or
18 the taking of the oath, did not impose a condition that
19 the person elected or appointed to office believed in
20 the Supreme Being?

21 DELEGATE BLAIR: That is correct, sir.

1 THE CHAIRMAN: Delegate Bennett?

2 DELEGATE BENNETT: Would the Chairman of the
3 Committee be good enough to explain the significance of the
4 decision of the Supreme Court today, Whitehill versus
5 Elkins, upon this situation? Does the majority opinion
6 forever lay to rest the Ober oath?

7 THE CHAIRMAN: Before the Chairman answers that
8 question, let me state simply so that the official trans-
9 cript will show it, that the Supreme Court of the United
10 States this morning handed down its opinion in the case
11 of Whitehill versus Elkins, No. 25, October Term, 1967.
12 The majority opinion delivered by Mr. Justice Douglas and
13 the minority opinion delivered by Mr. Justice Harlan, with
14 whom Mr. Justice Stewart and Mr. Justice White concurred,
15 have been reproduced, and copies are on the desk of each
16 delegate. The opinion and suit dealt with the requirement
17 that a teacher at the University of Maryland take an oath
18 required by the Maryland statute, commonly referred to as
19 the Ober Act.

20 Delegate Boyer has had a copy of this opinion
21 for somewhat longer than the remaining delegates, and he

1 may be able to comment more fully about it.

2 DELEGATE BOYER: I would be very glad to answer
3 Delegate Bennett's question if I could. I received a copy
4 of the opinion about, I guess a half hour ago. We were in
5 the Committee Room, and to be perfectly honest, I haven't
6 read it myself yet. All I know is what I have heard on the
7 radio, driving down here this morning, that it was a 6 to
8 3 decision in which the majority said that the Ober Law of
9 Maryland was too vague to reach the constitutional test,
10 and the minority said the only thing they could find in the
11 majority opinion was that they didn't like loyalty oaths.

12 I have not read the opinion to really, truly ans-
13 wer that, sir.

14 THE CHAIRMAN: Delegate Blair?

15 DELEGATE BLAIR: Mr. Chairman, I don't think it
16 materially affects the question today regarding the oath,
17 because pertaining to the vote on the oath, because in
18 the case of Shub versus Simpson, in 177 Maryland, the Court
19 of Appeals held that the oath in the Ober case was not an
20 oath. It was alleged to be an oath, but the Court actually
21 found it not^{to}/be an oath; so, therefore, it is more in the

1 nature of a declaration or affirmation independent of the
2 concept of being an oath; so I think that the question of the
3 Ober Law so far as the voting today on the oath is con-
4 cerned, is not of material import. I think it would be,
5 however, important for us to determine the meaning and
6 read the Supreme Court decision in the case insofar as it
7 pertains to the retention of Article XV, Section 11 of the
8 Code. There the Article XV, Section 11, not of the Code
9 but the Constitution, I think that was enacted for the pur-
10 pose of implementing the Ober Law; so it may be that when the
11 Committee on General Provisions determines whether to re-
12 tain in the Constitution Article XV, Section 11, which was
13 the basis for the Ober Law, that at that time we can con-
14 sider the constitutionality and the decision of the Supreme
15 Court in ruling on the unconstitutionality of the Ober Law.

16 I think the Ober Law may decide that Article XV,
17 Section 11 may not be necessary, and then again, it may be
18 necessary for other purposes, but I think that will come
19 when we meet it. I think the important question before
20 us right now is the question of whether or not it is
21 a need to consider the Ober Law in connection with the oath

1 and my conclusion in that respect is, it is not.

2 DELEGATE BOYER: Further answering Delegate
3 Bennett's question, your General Provisions Committee did
4 consider the theological interpretation of the impact of
5 the oath and also the Ober Law, and it was our considered
6 opinion that we should frame our oath as we have presented
7 it to you so it would be flexible because we knew at the
8 time that the Whitehill case was pending in the Supreme
9 Court and not being able to second-guess which way the
10 Supreme Court would rule, and knowing that that rule, what-
11 ever it may be, would be final, we have deliberately re-
12 worded the oath section so that it would not affect it.

13 THE CHAIRMAN: Any further questions for
14 purposes of clarification? Delegate Lord?

15 DELEGATE LORD: Mr. President, I would like to
16 further comment as a member of the Subcommittee on the
17 question raised by Delegate Sickles about the meaning of the
18 term, "office of profit or trust".

19 In the final report of the Commission, at
20 Pages 558 and following, there is a lengthy excerpt from
21 an opinion of Judge Barnes of the Court of Appeals of

1 Maryland in the case of Board of Supervisors of Elections
2 for Anne Arundel County versus the Attorney General. The
3 way this applies to the question of Delegate Sickles is that
4 in the recitation of the case law and opinions of the Attor-
5 ney General on this subject, Judge Barnes refers to many
6 different examples of "offices of profit or trust". He
7 says that "all officers elected by the people are public
8 officers", and this applies to local as well as Statewide
9 elections. He also gives many examples, but the applicable
10 ones to the question would be member of the Howard County
11 Metropolitan Commission, member of the Court Development
12 Commission of Baltimore City, member of the County Liquor
13 Board, member of the Board of County Commissioners of the
14 County.

15 All of these have been determined either by the
16 Attorney General or by the Court of Appeals to be offices
17 of profit or trust. I thought that this might help Dele-
18 gate Sickles, help in answering his question.

19 THE CHAIRMAN: Any further questions for pur-
20 poses of clarification?

21 (There was no response.)

1 THE CHAIRMAN: The Chair would like to make
2 two comments with respect to this before we leave this
3 period. I have not had the opportunity to read the major-
4 ity opinion in the Whitehill case carefully. I think it
5 is evident from the concluding portion of the opinion
6 that the Supreme Court has not held that a statute similar
7 to the Ober Law is necessarily unconstitutional, but has
8 held that the statute as drawn does not meet the consti-
9 tutional test; and in referring to the necessity of having,
10 and I quote, "narrowly drawn legislation", has apparently
11 left the door open for a statute similar, but perhaps
12 more clearly stated than the present Ober Law.

13 The second comment is really a question addressed
14 to the Chairman of the Committee on General Provisions for
15 purposes of clarification. Do I understand, Delegate
16 Boyer, from your earlier comment that the last sentence
17 in Lines 22 and 23 is not intended to forbid the enactment
18 of a statute similar to the Ober Law, at least if the
19 affirmation required under such a law is similar to that
20 in the present law, which the Court of Appeals has held is
21 not an oath?

1 DELEGATE BOYER: The Chairman has correctly
2 identified and interpreted that sentence. This does not
3 intend to completely prohibit any further statutory legis-
4 lation of a declaration. This would only eliminate the
5 requirement for any additional oath or affirmation, as
6 opposed to a declaration.

7 THE CHAIRMAN: Any other questions for purposes
8 of clarification?

9 (There was no response.)

10 If not, we will proceed to a consideration of
11 the Committee Recommendation GP-2

12 In further answer to Delegate Rybczynski's ques-
13 tion of a few moments ago, I have had handed to me just
14 now, sent for, a copy of the provisions of the Constitu-
15 tions of 1776, 1851, 1864 and 1867 with respect to oath.
16 That is, just the section which requires an oath. A very
17 quick look at each one of them indicates that none in the
18 oath section has made reference to a Deity. I would be
19 glad to send this to you, Delegate Rybczynski, so you may
20 look at it more carefully.

21 The question arises on the approval of Committee

1 Recommendation No. GP-2. Are there any amendments?
2 Delegate Rybczynski?

3 DELEGATE RYBCZYNSKI: Mr. Chairman, I have or-
4 dered an amendment, and I understand that it was in the
5 works or was being printed approximately fifteen minutes
6 ago. It will be a very short thing, and I can describe it.

7 THE CHAIRMAN: Is there a typewritten copy
8 available?

9 DELEGATE RYBCZYNSKI: I don't think so. No,
10 sir. The answer is No.

11 THE CHAIRMAN: I understand that the amendment
12 is being printed. In view of the fact that the rule
13 adopted a few days ago requires that the amendment be on
14 the desk before it can be considered, I will ask the
15 Committee of the Whole to wait just a few moments, and we
16 will find out just how quickly it will be here.

17 While we are waiting for that, may I take the
18 opportunity to again urge the delegates who are contem-
19 plating the preparation of minority reports that you please
20 do so just as quickly as possible; do not wait for the
21 printing of the report of the committee or the recommenda-

1 tion of the committee or the supporting memorandum. It
2 poses considerable problems for the print shop to get out
3 the recommendations of minority reports when they all go
4 to the print shop at the same time. This means that some-
5 body has to establish priorities, and this is sometimes
6 difficult to do; so please cooperate by getting them in and
7 getting them in promptly.

8 Let me also say that if you have minority re-
9 ports or similar memoranda to be circulated, and they are
10 ready in the evening, and you do not find anyone in the
11 Clerk's office, that my office will be open. Somebody will
12 be there until quite late every evening. Leave them
13 there. I can see that they get to the print shop very
14 early in the morning.

15 Committee Recommendation JB-1 is now being dis-
16 tributed.

17 Delegate Johnson?

18 DELEGATE JOHNSON: Mr. President, I would or-
19 dinarily leave this announcement for announcements, but if
20 we have time, with the lull in the Committee of the Whole,
21 perhaps I can make an announcement with respect to a

minority report.

1 THE CHAIRMAN: All right.

2 DELEGATE JOHNSON: Mr. Chairman, because JP-1
3 contains the majority view of the Judicial Branch, of
4 the entire Judicial Article and since some inquiries were
5 made concerning the minority view, if any, I should like
6 to announce that a minority report is being prepared to
7 some of the recommendations of the majority report; and
8 with some luck this will be distributed to the delegates
9 Wednesday, November 8.

10 Mr. Chairman, I was given to understand that
11 the Committee Calendar had its schedule full through
12 Thursday and that JB-1 would have to be considered sometime
13 soon thereafter, and as Temporary Chairman for the Minority
14 Report, I join our Majority Chairman Mudd in a request to
15 the Calendar Committee that JP-1 be considered no earlier
16 than Monday, November 13, neither the Majority nor the
17 Minority, once the Committee of the Whole has any blank
18 days in its schedule, but by the same token, representa-
19 tives of each Committee are desirous that the Committee of
20 the Whole have both reports before it so that a full and
21 frank discussion of the relative merits of each can be

1 made. Perhaps with everyone's cooperation, this will be
2 accomplished.

3 THE CHAIRMAN: Delegate Johnson, I doubt if we
4 can do that, much as we would like to. If the consider-
5 ation of the recommendation of the Committee on the Judicial
6 Branch were deferred, we would have at least one and per-
7 haps two blank days. This would mean that it would be
8 imperative for us to sit this Saturday and the next Satur-
9 day.

10 Is it possible for your minority report to be
11 concluded this afternoon? If so, we can have it printed
12 tonight and distributed tomorrow morning.

13 DELEGATE JOHNSON: I don't think it is possible
14 for it to be completed this afternoon, Mr. Chairman. I
15 think there is the possibility that it can be completed
16 tomorrow. I want to reiterate that the minority is not
17 suggesting that there be any blank days or that consider-
18 ation of the majority report be deferred. For this reason
19 and for that matter, any other reason, but we were operat-
20 ing under the impression that the Calendar had a full
21 schedule through Thursday of this week, and the reason that

1 I arise is because you announced earlier that it was pos-
2 sible for JB-1 to be considered on Thursday. I just wanted
3 to make our position clear. We will work all the earlier to
4 complete our task so that there will be no delay in the
5 matter.

6 THE CHAIRMAN: If you could possibly finish your
7 minority report or even part of it tonight, it would be
8 helpful.

9 I believe the amendment to be offered by
10 Delegate Rybczynski has now been prepared and is given.
11 The Chair recognizes Delegate Rybczynski. Is that the
12 amendment you desire to offer?

13 DELEGATE RYBCZYNSKI: Yes.

14 THE CHAIRMAN: We will mark it Amendment No. 1.
15 The Clerk will read the amendment.

16 MR. QUILLEN: Amendment No. 1 to Committee
17 Recommendation No. GP-2 by Delegates Rybczynski and Quillen.
18 On Page 1, Line 12 of Committee Recommendation No. GP-2,
19 after the quotation mark, insert the words: ("In the
20 presence of Almighty God".)

21 THE CHAIRMAN: The Chair recognizes Delegate

1 Rybczynski.

2 DELEGATE RYBCZYNSKI: Mr. Chairman, I want to
3 make it very clear --

4 THE CHAIRMAN: Just for the purposes of moving
5 the amendmant.

6 DELEGATE RYBCZYNSKI: I want to make clear that
7 what was just read was not complete. I want to emphasize
8 the parentheses before and after, so that I now move the
9 Amendment No. 1 to Committee Recommendation GP-2.

10 THE CHAIRMAN: Is there a second?

11 (Whereupon, the motion was seconded.)

12 THE CHAIRMAN: So that I can be clear as to
13 what you just said, Delegate Rybczynski, it is by under-
14 standing that you intend the amendment to include not
15 only the phrase, "in the presence of Almighty God", but
16 also the parentheses around that phrase?

17 DELEGATE RYBCZYNSKI: Yes, sir.

18 THE CHAIRMAN: The Chair recognizes Delegate
19 Rybczynski to speak to the amendment.

20 DELEGATE RYBCZYNSKI: Mr. Chairman, ladies and
21 gentlemen of this Convention, by way of explanation first

1 of all, the parentheses were inserted deliberately to give
2 an option to the person who is about to take the oath, the
3 same as in the balance of the recommendation, the words
4 "or affirm" are in parentheses, likewise to give the option
5 to the person who is being sworn.

6 Mr. Chairman, I want to apologize for the late-
7 ness of my amendment, mostly because I was greatly sur-
8 prised by the fact that there was nothing else on our
9 agenda to cover this wording.

10 As just stated, the purpose of that amendment is
11 not to dictate to any person whether or not he should take
12 an oath to Almighty God, but merely to give the option to
13 that person, that designee or elected official, to announce
14 to the world whether or not he believes in Almighty God
15 and wants to do so in the nature I might state of a tiny
16 little prayer before he is sworn.

17 Now, today we started with a prayer. The
18 Supreme Court started with a prayer. Many people in this
19 room started their day with a prayer. It is not unusual,
20 so that those persons who want to do so will be in a
21 position to announce to the world in the presence of

1 Almighty God. It adds dignity, it adds dignity not only to
2 that ceremony in the future but also to this document,
3 but also to this document.

4 Now, I don't think it is important that we worry
5 about what the Supreme Court might say about this situation,
6 and I don't think it is important that we worry about the
7 possible complaints from agnostics who might want to com-
8 plain. I am sure there are many who could care less,
9 so that I don't think we should worry about that.

10 It is possible, if you will look at Delegate
11 Proposal No. 1, the four or five pages, it is very possible
12 that the only place that our dear Lord will be referred to
13 in this Constitution will be in these parentheses marks.

14 I don't think that we should deny Him completely
15 in our Constitution.

16 There is plenty of religious history in this
17 State. We can start right with the foundation of the State
18 and the name of the State, the name of the first capital
19 of this State, the fact that the first Catholic diocese
20 was founded in this State. We could go on.

21 I would strongly suggest, Mr. Chairman, and

1 ladies and gentlemen of this Committee and of this Conven-
2 tion that we not be afraid of being accused of ~~action~~ to
3 allow our officeholders to express a belief in God. I
4 strongly suggest to you, sir, that this would be a good
5 thing.

6 THE CHAIRMAN: Is there any further discussion?
7 (There was no response.)

8 Are you ready for the question?

9 DELEGATE BEALL: Yes.

10 THE CHAIRMAN: The question arises on the adop-
11 tion of Amendment No. 1 to Committee Recommendation GP-2.
12 A vote Aye is a vote in favor of the adoption of the amend-
13 ment; a vote No is a vote against. All in favor, signify
14 by saying Aye; contrary, No.

15 The Noes seem to have it. The Chair will call
16 for a roll call vote. A vote Aye is a vote in favor of
17 the amendment. A vote No is a vote against.

18 Have all delegates voted? Does any delegate
19 desire to change his vote? The Clerk will record the votes.

20 There being 68 votes in the affirmative and
21 63 in the negative, the motion is carried, and the amend-

1 ment is adopted.

2 Are there any other amendments?

3 The question now arises on the adoption of
4 Committee Recommendation No. GP-2 as amended. Is there any
5 further discussion? Delegate Bard?

6 DELEGATE BARD: Mr. Chairman, is it in order to
7 ask for a clarification of a response earlier? The ques-
8 tion that was asked very early --

9 THE CHAIRMAN: What response?

10 DELEGATE BARD: In respect as to whether this
11 particular recommendation as noted would affect those who
12 hold local offices discussed within the Constitution.
13 I don't think that response was as clear, for me at any
14 rate, as it might have been.

15 THE CHAIRMAN: I understood the Chairman of the
16 Committee to say that the Committee believed that the oath
17 applied to every person elected or appointed to any office
18 under the Constitution or laws of this State and would
19 therefore apply to Statewide and to local offices. I will
20 ask the Chairman of the Committee whether that was his
21 statement. Delegate Boyer?

1 DELEGATE BOYER: I think you are both correct.
2 My original statement from the top of my head, in answer
3 to, I think Delegate Sickles' inquiry, was that it should
4 probably apply only to Statewide offices, but then on
5 correction from Delegate Lord and some notes that were
6 passed to me hastily, by members of the Committee, and I
7 think it was on Page 598 of the Draft Report, this does
8 state very emphatically that it applies to anyone who is
9 elected by the people; and this would include Statewide and
10 local offices.

11 THE CHAIRMAN: Any further discussion? The
12 question arises on the adoption of Committee Recommenda-
13 tion No. GP-2, or approval of Committee Recommendation
14 No. GP-2 as amended. A vote Aye is a vote in favor of the
15 approval of the recommendation as amended; a vote No is
16 a vote against. All in favor, signify by saying Aye. Con-
17 trary, No. The Ayes seem to have it. The Ayes have it.
18 The recommendation is approved.

19 That is the only business before the Committee
20 of the Whole. The Chair recognizes Delegate Powers.

21 DELEGATE POWERS: Mr. Chairman, I move the

1 Committee of the Whole arise and report to the Convention its
2 actions with respect to Committee Recommendation No. GP-2
3 as amended.

4 THE CHAIRMAN: Is there a second?

5 (Whereupon, the motion was seconded.)

6 Any discussion? All in favor, signify by say-
7 ing Aye; contrary, No. The Ayes have it. It is so or-
8 dered.

9 The Convention will please come to order.

10 (The mace was replaced by the Sergeant at Arms.)

11 (Whereupon, at 5:05 p.m., the Committee of the
12 Whole arose, and the Convention reconvened.)

13 -----

14 THE PRESIDENT: On behalf of the Committee of
15 the Whole, I report to the Convention that the Committee
16 of the Whole has considered Committee Recommendation No.
17 GP-2, and approved its recommendation.

18 The recommendation is referred to the Committee
19 of the Whole -- I am sorry -- the recommendation is re-
20 ferred to the Committee on Style, Drafting and Arrangement.

21 So that the record may be clear, I should have in

1 my report on behalf of the Committee of the Whole stated
2 that the Committee of the Whole approved Committee Recom-
3 mendation GP-2 as amended by Amendment No. 1, and that
4 the recommendation with Amendment No. 1 be referred to
5 the Committee on Style, Drafting and Arrangement.

6 The Chair has no further announcements. Are
7 there any announcements by committee chairmen? Delegate
8 Kiefer?

9 DELEGATE KIEFER: Mr. President, the Commiteeee
10 on Personal Rights and The Preamble will meet immediately
11 after adjournment of this meeting.

12 THE PRESIDENT: Delegate Mudd?

13 DELEGATE MUDD: Mr. President, the Committee
14 on the Judicial Branch will meet tomorrow morning at 9:30
15 a.m.

16 THE PRESIDENT: Delegate Sherbow?

17 DELEGATE SHERBOW: Mr. President, the Committee
18 on State Finance and Taxation will meet immediately after
19 this session is over.

20 THE PRESIDENT: Delegate Moser?

21 DELEGATE MOSER: Mr. President, the Committee on

1 Local Government will meet immediately after this session
2 to continue a review of the Committee memorandum.

3 THE PRESIDENT: Delegate Morgan?

4 DELEGATE MORGAN: Mr. President, the Committee
5 on the Executive Branch will meet immediately following
6 this session for a brief but important meeting. One of
7 the delegates has a proposal that she wishes to make to
8 the Executive Article. Apart from that proposal, the
9 Committee concluded its construction of the Executive
10 Article this afternoon and will report it to the Floor
11 sometime this week.

12 THE PRESIDENT: Any further announcements by
13 committee chairmen? Delegate Gallagher?

14 DELEGATE GALLAGHER: Mr. President, the Com-
15 mittee on the Legislative Branch will meet briefly tomorrow
16 morning at 9:30 before the Plenary Session at 10.

17 May I ask the Chair if it will entertain a
18 question when you have finished getting announcements from
19 committee chairmen?

20 THE PRESIDENT: Yes. Any further announcements
21 by committee chairmen? Delegate Boyer?

1 DELEGATE BOYER: Mr. President, the Committee
2 on General Provisions will meet immediately after this
3 Convention adjourns. We will take a break at 6 o'clock
4 for dinner for an hour and come back at 7 o'clock. We
5 will meet again, of course, tomorrow. No. We won't meet
6 tomorrow.

7 THE PRESIDENT: Any further announcements by
8 committee chairmen? Delegate Gallagher?

9 DELEGATE GALLAGHER: Mr. President, is it the
10 intention of the presiding officer to submit to the
11 Attorney General's Office any questionable adoptions of
12 language which may run into constitutional difficulty, or
13 is it your intention to rely upon the legal ability repre-
14 sented in this Convention with respect to these matters,
15 and I refer quite specifically to the action of the Com-
16 mittee of the Whole in adopting the amendment as it may
17 relate to the holding in the Torcaso case.

18 THE PRESIDENT: The intention of the Chair, based
19 on conversations with the Attorney General, would be not
20 to submit questions like this to the Attorney General for
21 an official opinion, because the opinions would not

1 necessarily resolve the question for the delegates. He
2 would rely upon research by the Convention Staff, augmented
3 in particular cases by research at our request by the
4 Attorney General's Office.

5 This is done deliberately in order to avoid
6 situations where there is an official opinion of the Attor-
7 ney General on a question of interpretation, but at the
8 same time gives us the benefit of the views of the Attorney
9 General's Office as a matter of research. I shall be glad
10 to ask the Attorney General to furnish us research on this
11 question.

12 Any further announcements? Delegate Vecera?

13 DELEGATE VECERA: Mr. President, I would like
14 to renew my motion.

15 THE PRESIDENT: Your motion is out of order at
16 this time. The Chair will recognize you after it recognizes
17 Delegate Powers for the purpose of moving adjournment. I
18 say that because it seems to me that if your purpose is
19 to prevent a session of the Committee of the Whole tomor-
20 row, the only way you can do it is to prevent a session
21 of the Convention. Delegate Powers will move that the

1 Convention adjourn until 10 a.m. tomorrow. I will recog-
2 ize you to speak in opposition to that motion. Delegate
3 Macdonald?

4 DELEGATE MACDONALD: Mr. President, may I please
5 have the record indicate my presence?

6 THE PRESIDENT: I will permit all delegates to
7 do that. I am sorry I neglected to do so. Any other dele-
8 gates present now who were not present at roll call who
9 desire to indicate their presence? If not, the Chair
10 recognizes Delegate Powers.

11 Since there will be discussion of this motion to
12 adjourn, please do not leave your seats at the moment.
13 Delegate Powers?

14 DELEGATE POWERS: Before I move to adjourn, I
15 would like to say that the Committee on Calendar and
16 Agenda took into consideration the fact of an election
17 tomorrow in Baltimore, and there were several members of
18 the Committee who are from Baltimore who intend to vote
19 tomorrow, and it was concluded that since the plan is to
20 convene at 10 a.m., and the polls opened at 7 a.m., no
21 delegate would be unduly inconvenienced by having to be

1 here at 10 o'clock; so, Mr. President, I move that we
2 adjourn until 10 a.m. tomorrow morning.

3 THE PRESIDENT: Is there a second?

4 (Whereupon, the motion was seconded.)

5 THE PRESIDENT: The Chair recognizes Delegate
6 Vecera.

7 DELEGATE VECERA: Mr. President, I would like
8 to renew my motion that the Committee of the Whole not be
9 convened tomorrow.

10 THE PRESIDENT: I don't think that motion is in
11 order, simply to accomplish your purpose, because if the
12 Convention convenes tomorrow, it can resolve itself into
13 a Committee of the Whole; so the only thing you could do to
14 accomplish your purpose as the Chair sees it, is to oppose
15 the adjournment to 10 o'clock tomorrow.

16 DELEGATE VECERA: Therefore, upon the recommen-
17 dation of Mr. President, I would move that the Convention
18 not be convened tomorrow, because it would cause undue
19 hardship to those City delegates who not only need to vote,
20 but there is another purpose, in gathering voters to the
21 polls, and things of this nature, which a citizen ought to

1 do. My relatives, for example, gather at the polls.

2 THE PRESIDENT: I would suggest that your proper
3 course is to move an amendment that the Convention adjourn
4 until whatever hour you designate on whatever date you
5 designate instead of 10 o'clock tomorrow.

6 DELEGATE VECERA: I therefore move that the
7 Convention adjourn until after the election, if you want to
8 meet tomorrow, until after the election, or the following
9 day.

10 THE PRESIDENT: We can't do it on an "or". Will
11 you make your motion one way or another?

12 DELEGATE VECERA: I would move that the Conven-
13 tion not convene tomorrow, rather it convene on Wednesday,
14 the following day.

15 THE PRESIDENT: At what time?

16 DELEGATE VECERA: Ten a.m.

17 THE PRESIDENT: The motion is that the motion
18 to adjourn until tomorrow morning at 10 o'clock a.m. be
19 amended, to mean a motion to adjourn until 10 a.m. Wednes-
20 day morning. Is there a second?

21 (Whereupon, the motion was seconded.)

1 THE PRESIDENT: The motion is seconded. Delegate
2 Armor?

3 DELEGATE ARMOR: Mr. President, I oppose this
4 amendment. A hundred years ago when the present Constitu-
5 tion was written, travel between Baltimore and Annapolis
6 involved a physical problem as well as an actual problem.
7 I plan to vote in Baltimore in the morning, and I will be
8 here for all the sessions, and I think that each of us
9 should try to arrange our schedule accordingly.

10 THE PRESIDENT: Delegate Gleason?

11 DELEGATE GLEASON: Mr. President, I don't have
12 any brief for elections in Baltimore, coming from Montgomery
13 County, but I am concerned about another development that
14 catches up with us here today. You will recall about a
15 month ago we had a discussion on the Floor with respect
16 to a proposed change in the Rules to allow adequate time
17 for minority reports to come before this body before a
18 majority report would be considered. Tomorrow, as the
19 Chairman of the Committee on Calendar and Schedule has
20 announced, ^{we} will be taking up a very substantive part of
21 the Legislative Article of this new Constitution, which deals

1 with such things as the bicameral, unicameral issue,
2 size of the legislature, the qualifications of people run-
3 ning for the legislature, salary compensation and other
4 matters, and yet here we are tonight without the minority
5 reports dealing with those subjects. I don't know how we
6 can reconcile this, but I remember the Chairman of the
7 Rules Committee at that time, unfortunately he is not here
8 today, I remember his saying that if such printing diffi-
9 culties did occur at the time, that it would be up to
10 the President to postpone or we could take such other
11 action to make sure that all the delegates had the minority
12 reports in front of them before we took up these weighty
13 questions. I do think, I think it is about time we start
14 to temper our urgency to meet a schedule with consideration
15 to what kind of product we are going to produce, and I
16 think we can act too hastily, and at least the delegates
17 ought to have the minority reports in front of them, at
18 least a day in advance, before we take up these substan-
19 tive matters.

20 THE PRESIDENT: Any further discussion?

21 Before we vote on the adjournment, the Chair

1 would ask the Chairman of Calendar and Agenda -- I am
2 sorry.

3 DELEGATE GRANT: Mr. President, I was on the
4 Rules Committee at the time this was discussed, and if you
5 recall, Motion No. 2 was for a five to six day delay in
6 the submission of reports. At that time, the Motion No. 2
7 was recommended unfavorably by the Committee, and the
8 Committee recommendation specifically said, if for any
9 reason a minority report had been unduly delayed because
10 of printing difficulties, the minority spokesman could
11 move as permitted by Rule 28 the Convention consideration
12 of the majority report be postponed, and made a special
13 order of business on the day after the minority report had
14 been made available to all the delegates.

15 I don't think it would be fair to the delegates
16 here, after having recommended to them that we defeat
17 Motion No. 2, to turn around and do the exact thing which
18 we promised would not be done. There are no less than
19 six minority reports coming in. I would like to find out
20 what the unicameral people have to say, even though I have
21 almost made up my own mind. I am very concerned with the

1 three succeeding minority reports which concern a number
2 of members of the legislature.

3 I would hate to see our effort down here split
4 asunder on a question of representation in the legislature.
5 I think it is much more important that we get the Consti-
6 tution passed on May 14 than that we get it completed on
7 December 12.

8 THE PRESIDENT: The Chair would like to comment
9 with respect to the statement just made, that the present
10 difficulty in having the minority reports is not difficulty
11 in the print shop, because the minority reports were not
12 available until this afternoon, a very short time ago.
13 In addition, the minority reports will be available for all
14 delegates this evening. Delegate Borom?

15 DELEGATE BOROM: Mr. Chairman, I think we want
16 to be careful in considering the question or the issue on
17 the Floor. I would hate for the delegates to vote in
18 favor of Delegate Vecera's motion and vote based on the
19 arguments presented in reference to minority reports. I
20 think we ought to divide the question and decide as a body
21 whether we want the Baltimore City delegates to be off

1 tomorrow, in order to electioneer or for whatever purposes
2 you may want to pursue.

3 THE PRESIDENT: Delegate Vecera?

4 DELEGATE VECERA: Mr. President, in response
5 to Delegate Borom's suggestion, I don't think the issue should
6 be divided. I think it is all pertinent in that tomorrow
7 being an election day in Baltimore City, also that the
8 Committee of the Whole will be meeting on a very important,
9 significant matter for the legislature, and I think the ques-
10 tion is all one, it should not be divided. It is for that
11 matter that I arose in the beginning. I think it is so
12 important a matter to be discussed that I would hate to
13 miss even one minute of it.

14 THE PRESIDENT: Any further discussion? Dele-
15 gate Chabot?

16 DELEGATE CHABOT: Mr. President, there are many
17 times when people end up voting the same way on an issue
18 for a variety of reasons. I think two reasons have been
19 presented here for voting Aye to Delegate Vecera's motion,
20 and I would hate to have the motion defeated simply be-
21 cause the people who consider one more important are reluc-

1 tant to favor the proposal because another reason has been
2 advanced for it. I for one, subscribe completely to
3 the reasons that were given by Delegate Gleason for voting
4 in favor of Delegate Vecera's motion. I think we have had
5 far too much haste, and I think this is an appropriate time
6 to call at least a little bit of a halt and give us a
7 chance to examine things. I suggest that frequently you
8 will find the reason for the delay in the preparation of
9 the minority reports is primarily because the minority
10 members of the committee recognizing their responsibility
11 to the report as a whole have worked with the chairman of
12 the committee in the preparation of the majority reports,
13 and have had to defer their efforts on the particular
14 points to which they dissented until after the work had been
15 done on the preparation of the majority reports.

16 THE PRESIDENT: Delegate Gleason?

17 DELEGATE GLEASON: Mr. President, let me say
18 with respect to the latter comment and your comment on the
19 preparation of these minority reports, I don't know of any
20 group on any of the six minority reports on the Legislative
21 Branch that has been dilatory and not working with a great

1 degree of haste and urgency that the situation requires in
2 preparing these reports. We do have a very practical
3 problem and that is that the Committee Staff has to first
4 of all take care of the majority report, but we only were
5 able to sign off on our minority report as of 2 o'clock
6 this afternoon. Let me say that after the vote is had on
7 the pending motion, I will move under Rule 20(a) to post-
8 pone consideration of the recommendations of the Legis-
9 lative Branch Committee until the day after tomorrow.

10 THE PRESIDENT: Delegate Gleason, if the present
11 motion carries, you would not have an opportunity to make
12 such a motion, because we would have adjourned. It could
13 be made tomorrow morning, of course, if the motion to amend
14 fails, and we do convene tomorrow morning.

15 Before you make any other motion, may I call on
16 Delegate Powers as Chairman of the Committee on Calendar
17 to advise the delegates of the situation of the Calendar
18 and the effect on the Calendar of either a deferral of
19 consideration of Committee Recommendation LB-1 until
20 another day, or adjournment of the Convention to another
21 day?

1 DELEGATE POWERS: Mr. President, in answer to
2 the question, I would say that if we have a blank day to-
3 morrow, it would simply mean that we will be in session
4 one day longer at the end, or be in session on a Saturday.
5 The schedule is very close from this time forward until
6 completion, and in order to attain the objective of finish-
7 ing the business of the Convention within the time allotted,
8 it will be necessary that we make up for any blank day
9 by sitting on a Saturday. We are already scheduled to sit
10 on two Saturdays. This would mean an additional one.

11 I might mention also that this has been tenta-
12 tively set for sometime, because the committee report which
13 I speak of, the committee recommendation, was offered here
14 a week ago today, on the 30th of October, and those who
15 have been involved with the minority reports will have
16 had eight full calendar days from that time in order to
17 prepare the minority reports. I know nothing about what the
18 reason is, but it certainly isn't a lack of time between
19 the time that the committee report was filed, the committee
20 recommendation, but from the standpoint of the Committee
21 on Calendar and Agenda, we are very much opposed to having

1 this blank day. We believe that all of the delegates were
2 dedicating themselves to spend their full time here and
3 not take a holiday because it affects some portion of us.
4 There are a hundred or so other delegates who are not in-
5 volved in voting in Baltimore, and we think it would be a
6 hardship to them to have to have an extra day.

7 THE PRESIDENT: Delegate Powers, may I inquire
8 what problems, if any, would be involved if the Committee
9 Recommendation LB-1 were deferred from tomorrow until
10 Wednesday and Committee Recommendation S and E-1 were
11 scheduled for tomorrow instead of Wednesday?

12 I believe there are some minority reports on
13 Committee Recommendation S and E-1 also, but I wanted to ask
14 Delegate Powers if he could indicate whether or not such
15 a switch would be possible or would not be possible.

16 DELEGATE POWERS: Of course, one thing in con-
17 nection with the switch, it would reduce the time of
18 preparation for the minority who would otherwise be ready
19 to proceed on Wednesday. It would reduce that time much
20 shorter than the time that has been reduced for those in the
21 Committee on the Legislative Branch to prepare minority

1 reports. I think we would have the same problem with
2 respect to minority reports and in fairness we attempt
3 to take these in the order that the reports are filed, in-
4 sofar as is feasible, and it would disrupt the situation,
5 and we probably would not be able to transact other business
6 tomorrow.

7 THE PRESIDENT: And I believe there are multiple
8 minority reports with respect to committee recommendations?

9 DELEGATE POWERS: There are a number of minority
10 reports. We have been working on the allocation of time
11 on that, and the minority there have been very diligent
12 and have their reports under preparation so that they
13 will be in the hands of the delegation in time to be con-
14 sidered before we take up the matter.

15 THE PRESIDENT: Is there any further discussion?
16 Delegate Clarke?

17 DELEGATE CLARKE: May I ask a question of the
18 Chairman of the Committee on Calendar? Delegate Powers,
19 do not the rules provide for the handling of this situa-
20 tion, in other words, if we convene tomorrow morning at
21 10 o'clock, and this body then decides after an hour or two

1 of deliberation that we would like to take an hour or two
2 or three-hour recess, could we not do that in order to get
3 the committee reports back on the Floor tomorrow afternoon
4 and resolve the whole thing?

5 DELEGATE POWERS: If we reach a point, in answer
6 to the delegate's question, if we reach a point that we
7 are considering matters that the delegates have not had
8 opportunity to familiarize themselves with, there is cer-
9 tainly provision in the rules so that we may delay the
10 proceedings and afford such an opportunity. We would con-
11 template that by the time the general orders had been
12 reached, and in view of the ample opportunity that is
13 afforded the committee chairman as well as representatives
14 of the minority to present without limitation of time an
15 explanation of any amendments, that there would not be such
16 a situation as someone voting out of ignorance, but he
17 would be very familiar with exactly what the situation was.

18 THE PRESIDENT: Any further comment? Delegate
19 Gallagher?

20 DELEGATE GALLAGHER: Mr. President, I am advised
21 by the members of the Staff that it will be at least another

1 hour before the minority reports are ready. However,
2 immediately after that time they can be distributed. That
3 will not take care of those who don't plan to return in the
4 event that we recess before 6:30, however.

5 THE PRESIDENT: Delegate Gallagher, may I inquire
6 of you simply for information of the delegates whether it
7 is contemplated that the consideration of Committee Recom-
8 mendation LB-1 will be extensive; that is, extending for
9 a full day?

10 DELEGATE GALLAGHER: Mr. President, I would say
11 that it is realistic to assume that it will go longer than
12 a single day. The presentation itself of the report, plus
13 the chairman's quiet advocacy of the report, may take some
14 time before the minority even gets a chance, at which time
15 one would hope that perhaps the ball game might be over in
16 certain respects.

17 THE PRESIDENT: Delegate Singer?

18 DELEGATE SINGER: I had a question to put to the
19 Chairman.

20 Mr. President, I have a question to ask of the
21 Chairman of the Committee on Calendar and Agenda as to how

1 long a period of time had been allotted to debate on
2 Committee Recommendation LB-1?

3 THE PRESIDENT: Delegate Powers, can you answer
4 the inquiry?

5 DELEGATE POWERS: The answer to that question is
6 that at the present time, we hope to complete the disposi-
7 tion of that committee recommendation before we adjourn
8 tomorrow evening. That has been worked out by agreement
9 with representatives of the majority and minority on the
10 debate limitation, and that is our goal for tomorrow.
11 Incidentally, we will have to follow goals like that for the
12 rest of the meeting or we are going to be in serious
13 trouble.

14 THE PRESIDENT: Delegate Bard?

15 DELEGATE BARD: Mr. President, would it be in
16 order to amend the motion so that we start tomorrow at
17 12, and thus we would have an opportunity to spend the
18 morning reading, going over the authorities and at the
19 same time those who were overly concerned about the res-
20 ponsibilities in Baltimore would be able to do both? I
21 offer this as a compromise position.

1 THE PRESIDENT: I don't think the motion would
2 be in order at this time. If the present motion fails, you
3 will be able to offer that as an amendment to the primary
4 motion.

5 DELEGATE BARD: I would really be interested and
6 more concerned if the present motion passes.

7 THE PRESIDENT: The Parliamentarian thinks that
8 the Chair could permit you to make the amendment either
9 way, either as a secondary amendment to the amendment now
10 pending or in the manner I indicated.

11 DELEGATE BARD: I would prefer to make it as
12 a secondary or tertiary amendment whichever it may have to
13 be.

14 THE PRESIDENT: State your amendment.

15 DELEGATE BARD: Mr. President, I move that we
16 convene tomorrow at 12 noon.

17 THE PRESIDENT: I take it that is a motion to
18 amend the amendment to the primary motion, to provide that
19 the Convention adjourn until noon tomorrow, Tuesday,
20 rather than 10 a.m. Wednesday. Is there a second?

21 (Whereupon, the motion was seconded.)

1 THE PRESIDENT: Is there any discussion of that
2 amendment? Delegate Murphy?

3 DELEGATE MURPHY: Mr. Chairman, I rise in support
4 of Delegate Vecera's motion. In Baltimore City we may
5 have eleven very important votes tomorrow, and any help
6 the Baltimore City Delegation can give to the people back
7 home to get them out, it is that much better for Balti-
8 more City, so please, I request the body to support Dele-
9 gate Vecera.

10 THE PRESIDENT: Delegate Chabot, you have already
11 been heard on the other amendment. You are now speaking
12 on Delegate Bard's amendment?

13 DELEGATE CHABOT: I would like to inquire of the
14 Chairman of the Calendar and Agenda Committee with regard
15 to a statement that he made before.

16 THE PRESIDENT: State your inquiry.

17 DELEGATE CHABOT: The Chairman had indicated
18 that the schedule that had been prepared by the Calendar
19 and Agenda Committee, in order to permit us to complete our
20 work within the allotted time already contemplates meet-
21 ings on at least two Saturdays. I would like to inquire

1 as to whether the schedule assumes a December 12 adjourn-
2 ment or whether schedule contemplates the possibility of
3 our using the additional month provided in the enactment?

4 THE PRESIDENT: The Chairman of that Committee
5 has heretofore stated that his schedule was based on com-
6 pliance with the enactment, to be finished by December 12,
7 and I think he has already answered your question.

8 Any further discussion? The question arises on
9 the secondary amendment to Delegate Powers' motion to ad-
10 journ, that is, that the motion be amended to provide that
11 the Convention adjourn until 12 noon tomorrow, Tuesday.
12 Are you ready for the question? A vote Aye is a vote in
13 favor of the amendment. A vote No is a vote against. All
14 in favor, signify by saying Aye; contrary, No. The Chair
15 is in doubt. A roll call vote. A vote Aye is a vote in
16 favor of the amendment to adjourn until 12 noon tomorrow.
17 A vote No is a vote against the amendment, and leaves
18 Delegate Vecera's amendment before us. Please signify your
19 votes.

20 Have all delegates voted? Does any delegate
21 desire to change his vote? The Clerk will record the vote.

1 There being 76 votes in the affirmative,
2 and 57 in the negative, the amendment is adopted. The
3 question now before you arises on the motion as amended to
4 amend the motion to adjourn to provide that we adjourn
5 until 12 noon tomorrow. The Chair recognizes Delegate
6 Wheatley.

7 DELEGATE WHEATLEY: Mr. President, will the
8 Chairman of the Committee on Calendar and Agenda yield for
9 a question prior to the vote?

10 THE PRESIDENT: Delegate Powers?

11 DELEGATE POWERS: Yes.

12 DELEGATE WHEATLEY: Just so we can be clear
13 on this debate, to be clear under the rule, under what
14 schedule would members not members of the committee be
15 aware of the dscision of the majority or minority so that
16 they may be scheduled for debate?

17 DELEGATE POWERS: The plan would not only permit
18 debate by the control debate under majority and minority,
19 but it would also allow uncontrolled debate. That is
20 the procedure which I believe has been explained, but there
21 is no harm in repeating this, each side is allowed equal

1 time, one, under the control, and this follows the procedure
2 of the United States Congress and other similar organiza-
3 tions, one under the committee chairman, who would control
4 the majority of the debate and yield time to various dele-
5 gates, and the other would be controlled by someone,
6 agreed upon by the minority, and that delegate would yield
7 time to other delegates, within the total controlled limi-
8 tation. Then there would be other time that would be per-
9 mitted by delegates who were not yielded to by the chairman
10 of the committee or whoever was in control of the minority
11 debate, and there would be a limitation of that time. In
12 the latter category, it would be a matter of being recog-
13 nized by the President, the Chairman of the Committee of
14 the Whole.

15 THE PRESIDENT: Delegate Wheatley?

16 DELEGATE WHEATLEY: Will the Chairman yield
17 for one further question to clarification? What would you
18 advise for the procedure in the event you want to par-
19 ticipate in the control so to speak of debate? Would
20 this be best accomplished by contacting the Chairman of
21 the Committee?

1 DELEGATE POWERS: If you want to participate in
2 the controlled debate on the side of the committee recom-
3 mendation, see the chairman of the committee. If you want
4 to participate on the other side, the chairman of the
5 committee can certainly tell you who controls the minority
6 and sometimes that will be divided among various people,
7 depending upon the division of the issues, and if you don't
8 get an agreement to get any time there, then the next thing
9 to do is to get recognized as soon as you can.

10 DELEGATE WHEATLEY: One further question, and
11 I think it will be cleared in my mind. In the event you
12 were not able to be in the controlled debate and were
13 questioning as to whether or not there was such time allowed
14 for the uncontrolled debate, the only way to change that
15 would be to vote against the rule; is that correct?

16 DELEGATE POWERS: That is correct. If any
17 delegate is not satisfied with the porposal tomorrow, for
18 example, starting out on the committee recommendation of the
19 Legislative Branch, there would be in addition to the usual
20 Calendar and Agenda, there would be a debate scheduled,
21 and at the time the motion is made to resolve the Convention

1 into the Committee of the Whole, it would carry with it the
2 adoption of the debate schedule. Any member who is ag-
3 grieved by the debate schedule would then be given an oppor-
4 tunity to assert his position, and there would be a vote of
5 the majority of the Convention as to whether it was de-
6 batable.

7 DELEGATE WHEATLEY: In order to intelligently
8 appraise this, would it be possible to have the tentative
9 schedules advanced perhaps a day in advance? Otherwise, we
10 may have to make on-the-spot decisions without being able
11 to reflect upon them.

12 DELEGATE POWERS: In answer to the delegate's
13 question, I will say at the beginning of this, it is prob-
14 ably a little more difficult at the beginning of this, and
15 we are still working on the debate schedule for tomorrow
16 now. As we have had more experience, and become more
17 familiar with the procedure, and also determine the will
18 of the majority of the Convention with respect to the
19 procedure, I believe that it will be entirely possible to
20 have the debate scheduled out several days in advance.

21 DELEGATE WHEATLEY: Thank you very much,

1 Mr. President and Mr. Chairman.

2 THE PRESIDENT: Let me add just one thing by way of
3 elaboration. Of course, at the time the debate schedule is
4 presented to the Convention, the delegate could vote against
5 it if he chose, but he could also offer an amendment to it,
6 which would be then submitted to a vote.

7 Is there any further discussion pending the ques-
8 tion? The question arises on the motion of Delegate Vecera
9 to substitute 12 noon Wednesday as the hour of adjournment,
10 to which we will adjourn, rather -- I am sorry, 10 a.m.,
11 rather than 12 noon tomorrow. Delegate Kirkland?

12 DELEGATE KIRKLAND: Mr. Chairman, if this motion
13 passes, could we assume that we might have to work tomor-
14 row night also?

15 THE PRESIDENT: If the motion which is now
16 before you passes, I assume that the Convention would then
17 pass the motion to adjourn as amended, which would mean
18 that we would stand adjourned until 10 a.m. Wednesday. The
19 question now before you is the question raised by Delegate
20 Vecera's motion, which in effect is a substitute for the
21 amendment of Delegate Powers' motion, which the Convention

1 just adopted. The primary motion as amended is that the
2 Convention adjourn until 12 noon tomorrow. Delegate
3 Vecera's amendment to that, which would be a substitute
4 for it, is that we adjourn until 10 a.m. Wednesday. If
5 that motion fails, then the question before you arises on
6 the motion to adjourn until 12 noon tomorrow. Delegate
7 Marion?

8 DELEGATE MARION: Mr. President, a point of
9 parliamentary inquiry: My impression was that the motion
10 we voted on a few moments ago was a motion to amend
11 Delegate Vecera's proposed amendment so that the issue now
12 before us would be Delegate Vecera's proposed amendment
13 as amended by Delegate Bard's amendment. If that is not the
14 case, there may be other delegates as confused as I am.

15 THE PRESIDENT: That is not the case. The
16 statement that the Chair just made is, I think, the correct
17 statement, as I have been advised by the Parliamentarian;
18 but I think the question is clearly before you: On the
19 pending question, you will decide whether you want to
20 adjourn until Wednesday or not. If that is carried,
21 obviously, you will vote for the motion to adjourn

1 until Wednesday. If that is defeated, then you will have
2 before you the motion to adjourn to 12 noon tomorrow. Is
3 that clear?

4 DELEGATE MARION: I am still not clear, Mr. Presi-
5 dent.

6 THE PRESIDENT: Let me state it once more:
7 The question now before you, in effect, is whether to substi-
8 tute Delegate Vecera's amendment for the motion of
9 Delegate Powers as amended. Delegate Powers' motion as
10 amended is that we adjourn until 12 noon tomorrow. Delegate
11 Vecera's suggested amendment is that we adjourn until
12 10 a.m. Wednesday. Delegate Marion?

13 DELEGATE MARION: Another question, Mr. Presi-
14 dent. How could we have amended Delegate Powers' original
15 motion when there was a pending motion, that of Delegate
16 Vecera on the Floor?

17 THE PRESIDENT: Because it was a secondary amend-
18 ment to the motion. I think we will save time if you
19 accept the advice of the Chair. Further debate won't
20 clarify you, I assure you. So there is no misunderstanding,
21 I don't think it makes any difference how we proceed. If

1 you would prefer to proceed the other way, you can appeal
2 the ruling of the Chair. Delegate Bard?

3 DELEGATE BARD: I prefer to appeal the ruling
4 of the Chair, Mr. Chairman, because when I had the option
5 of selecting this as an amendment to the original motion,
6 or offering it later, I selected the first option.

7 THE PRESIDENT: Which was an amendment of the
8 original motion. It was so treated by the Chair. The
9 original motion was Delegate Powers' motion which you have
10 amended.

11 DELEGATE BARD: I thought I was amending Dele-
12 gate Vecera's motion, but that is all right.

13 THE PRESIDENT: I think we are wasting a great
14 deal of time on parliamentary procedure. I really don't
15 care which way it goes, so long as we proceed orderly. Do
16 you desire to press your appeal from the ruling of the
17 Chair? Does it make any difference to you, Delegate Bard?

18 DELEGATE BARD: No, sir.

19 THE PRESIDENT: Does it make any difference to any
20 delegate which way the question is presented? Delegate
21 White?

1 DELEGATE WHITE: Mr. President, I respectfully
2 appeal from the rule of the Chair.

3 THE PRESIDENT: All right. Is there a second?
4 Delegate Taylor?

5 DELEGATE L. TAYLOR: I second the motion.
6 Also I arise on a point of parliamentary inquiry.

7 THE PRESIDENT: State your inquiry?

8 DELEGATE L. TAYLOR: Could the reporter read
9 back the amendment made by Delegate Bard?

10 THE PRESIDENT: I didn't catch the next word --

11 DELEGATE L. TAYLOR: Could the stenographic
12 reporter read back the amendment made by Delegate Bard?

13 THE PRESIDENT: The amendment made by Delegate
14 Bard was that the hour of adjournment be at noon tomorrow,
15 rather than 10 a.m. tomorrow. This was the amendment.
16 Delegate Taylor?

17 DELEGATE L. TAYLOR: I was asking can the
18 stenographic reporter read it back?

19 THE PRESIDENT: Yes, I suppose he can. What is
20 the purpose of reading back the transcript, Delegate
21 Taylor?

1 DELEGATE L. TAYLOR: Delegate Bard said that he
2 made the amendment to Delegate Vecera's motion, instead of
3 Delegate Powers'.

4 THE PRESIDENT: I think it would be much simpler
5 if we vote on the appeal from the ruling of the Chair, and
6 this will indicate the wishes of the entire assembly.
7 Delegate White?

8 DELEGATE WHITE: Out of respect to the Chair, I
9 withdraw the appeal. (Applause.)

10 THE PRESIDENT: Are you ready for the question?
11 The motion has been withdrawn. Delegate Boyer?

12 DELEGATE BOYER: Mr. President, before we vote
13 on that motion, I am reluctant to interrupt the stimulating
14 debate we have here, but 52 minutes ago, I announced that
15 the General Provisions Committee would meet at 6 o'clock.
16 May I amend that announcement and suggest we have
17 dinner and then come back at 7 o'clock. Thank you.

18 THE PRESIDENT: The question now arises on the
19 amendment offered by Delegate Vecera, that instead of
20 adjourning until 10 a.m. tomorrow, the Convention stand ad-
21 journed until -- I am sorry, instead of adjourning until

1 12 noon tomorrow, the Convention stand adjourned until
2 10 a.m. Wednesday. If this motion passes, I will then sub-
3 mit / you the motion to adjourn to 12 noon -- to 10 a.m.
4 Wednesday. If the motion fails, I will then submit to you,
5 in the absence of another amendment, the motion to adjourn
6 until 12 noon tomorrow. A vote Aye is a vote in favor of
7 substituting 10 a.m. Wednesday instead of 12 noon tomorrow,
8 as the hour of adjournment. A vote No leaves the motion
9 before you, to adjourn until 12 noon tomorrow. Are you ready
10 for the question? All in favor of Delegate Vecera's
11 motion, signify by saying Aye. Contrary, No. The Noes seem
12 to have it. The Noes have it. The motion is lost.

13 The question now arises on the motion to adjourn
14 until 12 noon tomorrow. Is there any further discussion?
15 Are you ready for the question? Delegate Kiefer?

16 DELEGATE KIEFER: Mr. President, just before we
17 adjourn, I would like to announce that because of the late-
18 ness of the hour, the Committee on Personal Rights and
19 Preamble will reconvene at 7:30. It takes us a half hour
20 longer to eat.

21 THE PRESIDENT: Delegate Sherbow?

1 DELEGATE SHERBOW: May I ask the Committee on
2 Finance and Taxation, please to meet with us immediately after
3 this session, and then we will determine what the rest of the
4 evening's program will be. Please come over after this
5 session adjourns.

6 THE PRESIDENT: Any further discussion? Dele-
7 gate Morgan?

8 DELEGATE MORGAN: Mr. President, the Committee
9 on the Executive Branch will postpone its meeting originally
10 planned for immediately after the session until 9:30 a.m.
11 tomorrow morning.

12 THE PRESIDENT: Are you now ready for the
13 question? The question arises on the motion to adjourn
14 until tomorrow, Tuesday, at 12 noon. All in favor, signify
15 by saying Aye; contrary, No. The Ayes seem to have it. The
16 Ayes have it. It is so ordered.

17 (Whereupon the Convention adjourned at 5:55

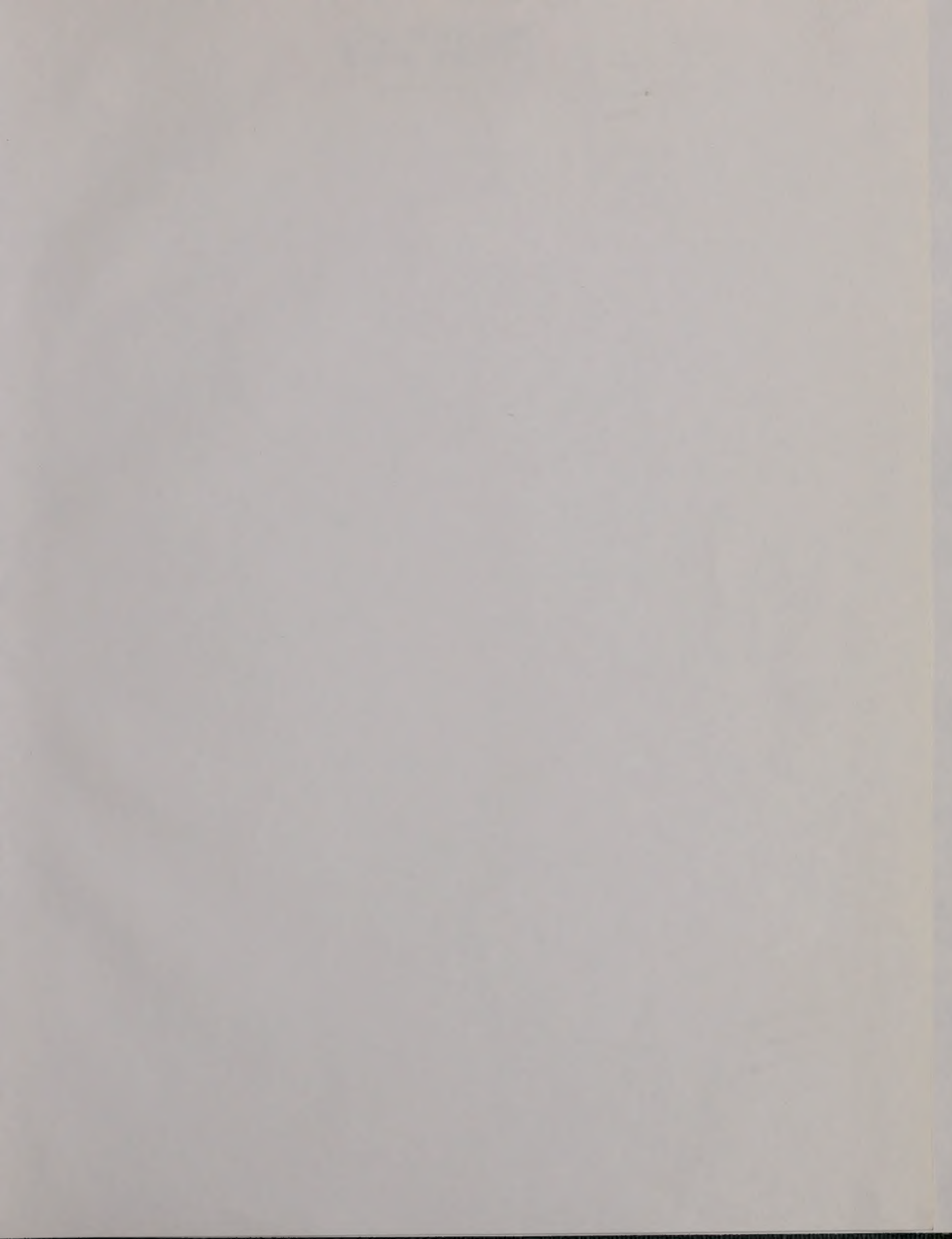
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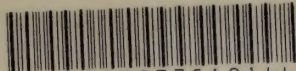
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